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Articles

The Integrated Active and Reserve Division: Background, Legal Foundation, and the Role of Judge Advocates
Major Christopher Behan

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TJAGSA Practice Notes

Faculty, The Judge Advocate General's School, U.S. Army

Administrative and Civil Law Note (New Army Regulation on Fatal Training and Operational Accident Collateral Investigations and Family Presentations)

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The Integrated Active and Reserve Division: Background, Legal Foundation, and the Role of Judge Advocates

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Introduction

On 4 and 5 June 1999, the Army activated its first integrated Active and Reserve Component combat divisions: the 7th Infantry Division (Light), with headquarters at Fort Carson, Colorado;² and the 24th Infantry Division (Mechanized), with headquarters at Fort Riley, Kansas.³ Although these units bear the designations of some of the most storied divisions in Army history,⁴ they are unique organizations that break new ground in integrating the Army's active and Reserve combat units. Each division is commanded by an active duty major general and has an active duty headquarters staff; however, the combat power of each division consists entirely of Army National Guard enhanced-readiness combat brigades.⁵

This article discusses the history and legal basis for the integrated divisions, outlines their organization and structure, and analyzes the role of judge advocates in these new units.

History of the Integrated Divisions

The United States Army has three major components: the Active Component, the U.S. Army Reserve, and the National Guard of the United States.⁶ Members of the National Guard of the United States also serve a dual role as members of their state's National Guard under control of the state governors and adjutants general (TAG).⁷ Although the Army's leadership has made several efforts to integrate the three components into a cohesive whole, the efforts have not always been successful. The components have often competed for resources, roles, and training,⁸ notwithstanding official Army rhetoric to the contrary.⁹

Army leaders have made a number of efforts to integrate the Active Component and the National Guard more seamlessly over the past quarter century. In 1973, following the Vietnam War, the Army adopted the "Total Force" policy, a force restructuring that attempted to "integrate the active duty,

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1. The author served as Chief, Administrative and Operational Law, 24th Infantry Division (Mechanized), from June 2001 to June 2002.
 2. *Fort Carson Integrates Active Duty and National Guard*, ASSOCIATED PRESS STATE & LOCAL WIRE, June 5, 1999, LEXIS, News Group File.
 3. Daniel Hobson, *24th Infantry Division Reactivated*, ARMY NEWS SERVICE (June 11, 1999), at <http://www.dtic.mil/armylink/news/Jun1999/a1999062424thid.html>.
 4. The 7th Infantry Division first fought in World War I. The "Bayonet Division" also fought with distinction in World War II and Korea. In the 1980s, the 7th Infantry Division became the Army's first true light infantry division. Before being deactivated in 1994, the division participated in actions in Honduras, Panama, and the Los Angeles riots. Seventh Infantry Division, *Bayonets*, at <http://www.carson.army.mil/7ID/7ID.htm> (last modified Nov. 15, 2001). The 24th Infantry Division, "The Victory Division," was the first Army unit to fire hostile shots in the Pacific during World War II—at Pearl Harbor. Elements of the 24th Infantry Division, including the well-known Task Force Smith, were the first to fight in Korea. In the Gulf War, the 24th Infantry Division penetrated deep into the heart of Iraq as part of General Schwarzkopf's famous "left hook" maneuver, carrying out what has been called "the longest cavalry charge in history." U.S. 24th Infantry Division Association, *Victory Division*, at <http://home.att.net/~victory24/history.htm> (last visited Jan. 6, 2003).
 5. The 24th Infantry Division has three mechanized infantry brigades: the 30th Heavy Separate Brigade (HSB) in North Carolina, the 218th HSB in South Carolina, and the 48th HSB in Georgia. The 7th Infantry Division has three light infantry brigades: the 45th Separate Infantry Brigade (SIB) in Oklahoma, the 39th SIB in Arkansas, and the 41st SIB in Oregon. U.S. Dep't of Army, News Release No. 99-028, Unit Designation of Two New U.S. Army Active Component/Army National Guard Integrated Divisions (7 Apr. 1999) [hereinafter News Release No. 99-028], available at <http://www.dtic.mil/armylink/news/Apr1999/r19990406greentop.html>. The Army created the enhanced readiness brigades in 1993 to serve as a trained and ready force of National Guard units that could augment and reinforce active duty in the event of two major and nearly simultaneous regional conflicts. GEN. ACCOUNTING OFFICE, ARMY NATIONAL GUARD: COMBAT BRIGADES' ABILITY TO BE READY FOR WAR IN 90 DAYS IS UNCERTAIN, REPORT NO. GAO/NSIAD 95-91, at 2 (1995) [hereinafter GAO 95-91].
 6. 10 U.S.C. § 311 (2000); 32 U.S.C. §§ 101, 104 (2000); see also Jeff Bovarnick, Perpich v. United States Department of Defense: *Who's in Charge of the National Guard?*, 26 NEW ENG. L. REV. 453 (1991).
 7. See U.S. CONST. art. I, § 8, cl. 16 (investing the authority to organize, arm, and discipline the militia in the federal government, but giving states the authority to train it and appoint its officers); Patrick Todd Mullins, *The Militia Clauses, the National Guard, and Federalism: A Constitutional Tug of War*, 57 GEO. WASH. L. REV. 328, 328-30 (1988); see, e.g., 10 U.S.C. § 12301 (limiting the federal government's authority to mobilize the National Guard without the consent of state governors and adjutants general).
 8. See, e.g., U.S. Dep't of Army, News Release No. 98-24, Army Releases White Paper (18 June 1999) [hereinafter News Release 98-24], available at <http://www.dtic.mil/armylink/news/Jun1998/a19980615integrat.html> (discussing the Army Chief of Staff's admission in a recent white paper that relations between the components have been "strained" at times).

National Guard, and the other Reserve forces into a homogeneous whole” and ensure that war plans included all components fighting alongside each other.¹⁰ The Department of Defense shifted resources and built up National Guard and Reserve units to the point where over fifty percent of the Army strength resided in Reserve formations.¹¹ During the years between the Vietnam War and the 1991 Persian Gulf War (Gulf War), the Army experimented with new concepts, such as “roundout” and “roundup” brigades, in which National Guard maneuver brigades were to train with associated Active Component divisions and augment them during wartime. These brigades received higher priority for resources than other National Guard brigades.¹²

The Gulf War represented the first real test of the Total Force policy. A number of National Guard and Reserve units, primarily combat service and combat service support units, participated in the conflict.¹³ Most performed well, and some actually outperformed their active duty counterparts.¹⁴ Major National

Guard combat maneuver formations, however, did not always perform as well. Although the President authorized the mobilization of three roundout and roundup brigades, none of those brigades ever made it to the war. The Army refused to certify them for combat, and they remained in a training status until the war ended.¹⁵

After the Gulf War, the Army and Congress reacted to perceived readiness problems within some National Guard units. In 1991, the Army adopted the “Bold Shift” strategy in which Army officials provided additional focus for peacetime training goals and Congress mandated the assignment of Active Component advisors to the brigades.¹⁶ One year later, Congress passed the Army National Guard Combat Readiness Reform Act (ANGCRRA) of 1992.¹⁷ This new plan also focused on improving integration between Active and Reserve units. In ANGCRRA, Congress directed the Secretary of the Army to assign Active Component advisors to the brigades,¹⁸ minimize post-mobilization training time for National Guard units,¹⁹

9. For example, in 1918, the War Department published the following guidance:

This country has but one army—the United States Army. It includes all the land forces in the service of the United States. Those forces, however raised, lose their identity in that of the United States Army. Distinctive appellations, such as the Regular Army, Reserve Corps, National Guard, and National Army, heretofore employed in administration and command, will be discontinued, and the single term, the United States Army, will be used.

Headquarters, Dep’t of War, Gen. Orders No. 73 (7 Aug. 1918), *quoted in* Bovarnick, *supra* note 6, at 464 n.87; *see also* Frederick Bernays Wiener, *The Militia Clause of the Constitution*, 54 HARV. L. REV. 181, 207 n.149 (1940). Compare this to a more recent pronouncement from General Eric Shinseki, the current Army Chief of Staff:

Today, I declare that we are The Army—totally integrated, with a unity of purpose—no longer The Total Army, no longer The One Army. We are The Army, and we will march into the 21st century as The Army. We acknowledge our components and their unique strengths. But we are The Army, and we will work to structure ourselves accordingly.

General Eric Shinseki, Remarks at Army Chief of Staff Arrival Ceremony (June 22, 1999), at <http://www.army.mil/leaders/CSA/speeches/990622.htm>.

10. Kevin D. Hartzell, *Voluntary Warriors: Reserve Force Mobilization in the United States and Canada*, 29 CORNELL INT’L L.J. 537, 539-41 (1996).

11. News Release 98-24, *supra* note 8 (stating that in 1998, fifty-four percent of the Army’s strength was in the Reserve Components).

12. GAO 95-91, *supra* note 5, ch. 1. There were seven roundout and roundup brigades out of forty-four National Guard combat brigades. *Id.*

13. CAPTAIN LES MELNYK, NATIONAL GUARD BUREAU OFFICE OF PUBLIC AFFAIRS HISTORICAL SERVICES DIVISION, MOBILIZING FOR THE STORM: THE ARMY NATIONAL GUARD IN OPERATIONS DESERT SHIELD AND DESERT STORM (2001), available at <http://www.ngb.dtic.mil/downloads/pdf/desertstorm.pdf>.

14. *See id.* at 23 (noting that a National Guard Multiple Launch Rocket System unit achieved the highest rate of fire of any Third Army artillery unit); Hartzell, *supra* note 10, at 541 n.25.

15. GAO 95-91, *supra* note 5, at 2. There was a tremendous disconnect between how the brigades perceived their own readiness and how the Army perceived it. At the time of mobilization, the brigades estimated that they would need twenty-eight to forty-two days of post-mobilization training. The two brigades that completed training, however, required 91 and 106 days of training, and the Army estimated that the units would each require an additional twenty-four days of post-training activities before deployment. *Id.* The decision not to deploy the brigades to the Gulf was extremely controversial; some National Guard soldiers believed that the Army had subjected Guard units to a double standard, but many Active Component officers believed that Guard units did not understand Army training doctrine and needed to be more objective in assessing their own proficiency. *Id.* at 34-35. The situation came to a head when the Georgia National Guard’s 48th Brigade, slated to augment the 24th Infantry Division (then an active unit based at Fort Stewart, Georgia), went to the National Training Center (NTC) and participated in the longest rotation to that point in the NTC’s history. The NTC officials found the brigade so unprepared that its commander was relieved on the spot, and the 24th Infantry Division deployed to the Gulf with an Active Component brigade to round out its strength. JAMES KITFIELD, *PRODIGAL SOLDIERS* 351-52 (Simon & Schuster 1995). *But see* MELNYK, *supra* note 13, at 18-21 (providing the National Guard perspective for this story, suggesting that Guard maneuver units were left out of the fight because—unlike the Guard’s aviation, artillery, combat service and combat service support units—the Army did not need them and many active Army officers believed Guard maneuver units could not be combat ready).

16. GAO 95-91, *supra* note 5, at 2.

17. Pub. L. No. 102-484, §§ 1101-1137, 106 Stat. 2315, 2536-42 (codified at 10 U.S.C. § 10105).

maximize the percentage of National Guard officers with prior Active Component service,²⁰ and make Active Component advisors and counterpart units responsible for supervising training in National Guard units.²¹ In 1993, the Army eliminated roundout and roundup brigades in favor of “enhanced readiness brigades” that are expected to be ready for combat within sixty to ninety days after mobilization and have the highest priority for training, resources, and equipment.²²

The formation of Active-Reserve integrated divisions is the latest step in the evolutionary process of integrating Active Component and National Guard units. The 1995 Army National Guard Division Redesign Study²³ recommended the formation of two integrated divisions with Active Component headquarters and National Guard maneuver brigades. The proposal was approved in 1996, and in 1997, U.S. Army Forces Command (FORSCOM) formed an Implementation Process Action Team (IPAT) to solve any problems that emerged during the creation of the divisions.²⁴ In 1998, the FORSCOM commander, the Director of the Army National Guard, and the adjutants general from each of the six contributing states signed a memorandum of agreement (MOA) officially creating the divisions.²⁵ The 7th Infantry Division and the 24th Infantry Division were formally reactivated on 4 and 5 June 1999.²⁶

Legal Basis for the Integrated Divisions

Overview

Unlike their Active Component counterparts, National Guard soldiers enjoy a constitutionally enshrined dual status as members not only of their individual state militias, but also as Reserve members of the U.S. armed forces.²⁷ Title 32 of the United States Code governs the conduct, training, and command relationships of National Guard members when they are not mobilized but are engaged in military training.²⁸ As state militia, they fall under the authority of their state TAG and governor.²⁹ When they are mobilized in the service of the United States, Title 10 of the United States Code governs their conduct, training, and command relationships.³⁰

The distinction between state and federal status is critical to understanding the legal foundation of the integrated divisions, as well as their legal complexities. By design and of necessity, the National Guard operates differently from the Active Component. Under the Constitution, the states have the authority to select the officers who will lead their units.³¹ Title 32 recognizes the authority of those officers and the National Guard command structure.³²

18. *Id.* § 1132. It has been difficult to measure the effectiveness of these advisory arrangements. In a 1995 study, the General Accounting Office (GAO) found that the Army had not clearly established the duties or delineated the authority of the Active Component advisors. GAO 95-91, *supra* note 5, ch. 3.

19. 10 U.S.C. § 1119, 106 Stat. at 2539.

20. *Id.* § 1111.

21. *Id.* §§ 1131-1132.

22. *See id.* § 1135 (directing the Army to develop a mobilization priority system for National Guard units, and to give the highest-priority units first priority in the allocation of equipment, training, support, and personnel). In 1995, the GAO reported that the elimination of the roundup and roundout brigades and the implementation of the new rules had caused some confusion within National Guard units. GAO 95-91, *supra* note 5, at 2.

23. GAO 95-91, *supra* note 5.

24. John Pike, *Army National Guard Divisions*, Global Security (Nov. 3, 2002), at <http://www.globalsecurity.org/military/agency/army/division-arng.htm>.

25. Memorandum of Agreement between U.S. Army Forces Command, National Guard Bureau, and the Adjutants General of Arkansas, Georgia, North Carolina, Oklahoma, Oregon, and South Carolina, subject: Active Army/Army National Guard Integrated Division (12 Oct. 1998) [hereinafter MOA].

26. News Release No. 99-028, *supra* note 5.

27. U.S. CONST. art. I, § 8, cl. 16.

28. 32 U.S.C. § 501 (2000).

29. *Id.* § 109.

30. 10 U.S.C. §§ 10105-10106 (2000).

31. U.S. CONST. art. I, § 8, cl. 16.

32. 32 U.S.C. §§ 101(4)(D), 310.

Just as the control of National Guard units may come from federal or state authorities, so may their funding. National Guard units use a different funding stream than Active Component units.³³ The funding source depends on a unit's mission and legal status (Title 32 or Title 10) at any particular time.³⁴ This can create fiscal challenges for those who must provide these resources for the National Guard brigades in integrated divisions.

A collection of statutes and the previously mentioned MOA govern the command relationship between the Active and National Guard components of the integrated divisions. Title 32 allows Active Component officers to command National Guard troops when they are properly designated to do so.³⁵ The MOA between FORSCOM, the National Guard Bureau (NGB), and TAGs of the six contributing states supplements this authority.³⁶ The MOA is a broadly worded agreement covering everything from command and control relationships to budgets. It begins with a discussion of the constitutional underpinnings of the dual federal-state status of National Guard troops, and uses that discussion as a foundation for integrating the Active Component and National Guard units' command structures.³⁷ The MOA recognizes that the federal and state governments have distinct roles in relation to the National Guard.³⁸ Significantly, the MOA also contains a provision granting Active Component commanders the necessary authority to carry out the purposes of the MOA, even when federal statutory authority does not grant them sufficient control over the National Guard units.³⁹

The following subsections discuss various aspects of the MOA and summarize some of the arrangements made to bridge

the gap between the Active Component headquarters and the National Guard maneuver brigades.

Division Headquarters Mission

At present, the mission of the division headquarters is limited to overseeing its brigades' training and readiness to mobilize promptly in case of war, national emergency, or other contingencies; this is known as Training and Readiness Oversight (TRO).⁴⁰ The brigades remain available to their TAGs and governors to conduct state missions.⁴¹ The brigades also retain their missions as separately deployable entities within currently existing war plans; in the TRO phase of the integrated division process, the divisions themselves will not deploy as integrated units.⁴² The division headquarters performs most of the administrative functions required to keep the National Guard brigades ready for mobilization. A partial list of the division commander's responsibilities includes issuing annual training guidance, determining training priorities, approving the mission essential task list (METL) for the brigades, approving each brigade's yearly training program, validating the brigades' compatibility with Active Component forces and validation for deployment, conducting inspections of the brigades, reviewing brigade unit status reports (USR), issuing a consolidated division USR, and participating in the rating schemes of the separate brigade commanders and subordinate battalion commanders.⁴³ Because many of these functions also affect the brigades' readiness to participate in state missions, division commanders must coordinate closely with each brigade's respective state TAG.

33. MOA, *supra* note 25, § X, para. A.1.

34. *See, e.g.*, 32 U.S.C. § 107; MOA, *supra* note 25, § X, para. A.1.

35. 10 U.S.C. § 104(d). This section states:

To maintain appropriate organization and to assist in training and instruction, the President may assign the National Guard to divisions, wings, and other tactical units, and may detail commissioned officers of the National Guard or of the Regular Army or the Regular Air Force, as the case may be, to command those units.

Id.

36. MOA, *supra* note 25, para. 1(A).

37. *Id.* § X, paras. 1.A-1.B.

38. *Id.* § X, para. 1.B.

39. *Id.* § X, para. 1.C. "In those instances when Federal law may not be considered sufficient to accomplish the purposes of this agreement, the specified Federal officers will be deemed to be acting on behalf of and with the permission of the respective Governors." *Id.*

40. *Id.* § VI, para. A.1.

41. *Id.* § VI.

42. *Id.* § VI, para. A, § VII, para. A.1.

43. *Id.* § VIII.

Command Arrangements

Command arrangements for the integrated divisions are complex; the National Guard brigades fall under their division commanders for combat training purposes and their state TAG for state missions.⁴⁴ The dual nature of the brigades' existence requires close cooperation, open communication, and full coordination between the Active Component division headquarters and the TAG.⁴⁵

The divisions, in turn, are each under the command of a Continental Army of the United States (CONUSA) during the TRO phase. The 24th Infantry Division (M) is part of 1st Army, and the 7th Infantry Division (L) is part of 5th Army.⁴⁶ Because the brigades in the divisions are all separately deployable during the TRO phase, the divisions also have a responsibility to coordinate with gaining commands in the event National Guard brigades are mobilized separately.⁴⁷ A relatively new concept called "corps packaging" aligns the integrated divisions with Active Component corps headquarters.⁴⁸ Finally, FORSCOM exercises command and control of the integrated divisions through the CONUSAs.⁴⁹ The staffs at both the brigade and division levels, therefore, must be flexible and adept at working under different command arrangements.

Military Justice

There are vast differences between the disciplinary tools available to commanders when troops are operating under state codes, in federal training status under Title 32, or mobilized under Title 10. When the Army first created the integrated divi-

sions, Army regulations were silent about disciplinary responsibility in multi-component units.⁵⁰ It was necessary, therefore, for the MOA to create a disciplinary scheme that recognized the different legal statuses of the Active Component and National Guard troops in the integrated division.

When the integrated National Guard units are entirely under state status, such as during disaster relief operations, their state TAGs are responsible for maintaining their good order and discipline. The units also remain in Title 32 status when they train for their wartime missions under their integrated division commanders; state-specific disciplinary rules still apply, just as they did before the activation of the divisions,⁵¹ but TAGs must coordinate with division commanders before taking disciplinary actions that require approval above the brigade level. The division commanders are general court-martial (GCM) convening authorities for their Active Component division headquarters unit.⁵² They also have GCM authority over National Guard troops that have been mobilized, are in Title 10 status, and are still under control of the division commander.⁵³

In the most recent version of *Army Regulation (AR) 27-10*, the Army adopted a regulatory scheme similar to that found in the integrated division MOA. The regulation now clarifies that each state has the authority and responsibility for military discipline of its soldiers when they are in not in federal status.⁵⁴ Federal commanders of multi-component units must send their recommendations to discipline National Guard soldiers to the soldiers' state chain of command. Likewise, National Guard commanders whose multi-component units include soldiers from other states must send their disciplinary recommendations to the soldiers' respective state chains of command.⁵⁵

44. *Id.* § VI, para. A.1.

45. *See, e.g., id.* § X, paras. B.2-B.4 (discussing the unique roles played by the division commander and the TAG, and recognizing the necessity for coordination and communication for the brigades to be prepared for both federal and state missions).

46. *Id.* § VII.

47. *See, e.g., SFOR to Cut, Restructure Bosnia Force*, ARMY NEWS SERVICE, Nov. 2, 1999, available at <http://www.dtic.mil/armylink/news/Nov1999/a19991102bosnianew.html> (reporting that both the 24th Infantry Division and the 7th Infantry Division sent National Guard units to Bosnia, under the command of the 3d Infantry Division).

48. Kristin Patterson, *Shinseki Expands Active Component/RC Division Teaming*, ARMY NEWS SERVICE, Sept. 19, 2000, available at <http://www.dtic.mil/armylink/news/Sep2000/a20000919ngteaming.html>. Under this concept, the 24th Infantry Division is aligned with the XVIII Airborne Corps, and the 7th Infantry Division is aligned with the III Corps. *Id.*

49. MOA, *supra* note 25, § V, para. A.4.

50. *See generally* U.S. DEP'T OF ARMY, REG. 27-10, MILITARY JUSTICE (24 June 1996).

51. MOA, *supra* note 25, § IX, subsec. A.

52. *See* Headquarters, Dep't of Army, Gen. Orders No. 10 (9 Apr. 1981) (designating the commanders of Fort Carson, Fort Riley, and eight other installations or commands as General Court-Martial Convening Authorities); *see also* MOA, *supra* note 25, § IX, para. A.2.

53. MOA, *supra* note 25, § IX, para. A.2.

54. *Id.* para. 21-13b.

55. U.S. DEP'T OF ARMY, REG. 27-10, MILITARY JUSTICE (6 Sept. 2002) [hereinafter AR 27-10].

There is no such thing as integrated money in integrated divisions; National Guard units rely on different funding sources than Active Component units.⁵⁶ Funding in the integrated divisions includes several different “colors” of money: Operations and Maintenance Army (OMA), Operations and Maintenance National Guard (OMNG), Other Procurement Army (OPA), and National Guard Pay and Allowances (NGPA).⁵⁷ Thus, commanders of integrated divisions, who are responsible for budgeting, manpower, training, and resources for their Active Component and National Guard units,⁵⁸ must understand a more complicated set of fiscal law rules. State TAGs also play a critical role in the budgeting process; the integrated National Guard brigades may form a substantial portion of the forces at their disposal. State TAGs must assure that the integrated National Guard units remain ready to perform missions for the states, as well as for the federal government.

The National Guard Bureau (NGB) also provides separate unit training and readiness funds to support the integrated National Guard brigades.⁵⁹ The NGB distributes those funds to the brigades using existing procedures, with one exception—each year, in coordination with FORSCOM and the NGB, the division commander withholds a portion of these NGB funds for uses consistent with the purposes of the funds’ appropriation. Division commanders must coordinate with state TAGs before making any decisions, such as the reallocation of funds, that affect the overall funding levels of the brigades.⁶⁰

Structure and Organization of the Integrated Divisions

In their current form, the integrated divisions differ substantially from the Army’s other combat divisions, whether Active

Component or National Guard. As previously mentioned, the integrated division consists of an Active Component Headquarters and Headquarters Company (HHC), and National Guard combat maneuver brigades. In the TRO phase of the integrated divisions, there are no traditional divisional assets such as division artillery, a division support command, or division aviation.⁶¹ The 24th Infantry Division also has a small Forward Headquarters at Fort Jackson, South Carolina,⁶² under the direction of the Assistant Division Commander for Maneuver-Forward (ADC-F).⁶³

The brigades of the 7th Infantry Division are organized as separate infantry brigades,⁶⁴ and the brigades of the 24th Infantry Division are organized as separate mechanized infantry brigades.⁶⁵ In addition to their National Guard staffs, the National Guard brigades each have a cadre of Active Guard and Reserve (AGR) officers and noncommissioned officers to help run day-to-day operations at brigade armories.⁶⁶

Judge Advocate Operations in the Integrated Divisions

Each integrated division has an Active Component O-5 staff judge advocate (SJA). The SJA is responsible for TRO of the division’s judge advocates and for ensuring that the division complies with the MOA, federal law, and state law. The SJA has a skeletal staff of two or three attorneys and several paralegal specialists.⁶⁷ The SJA’s staff usually provides legal support for the installation as well as the division.⁶⁸

The Reserve brigades are each authorized five National Guard attorneys: an O-5 SJA, an O-4 deputy SJA, and three company-grade judge advocates. They are also authorized a warrant officer legal administrator, a chief paralegal noncommissioned officer (NCO), and several paralegal specialists. The

56. See, e.g., 10 U.S.C. § 115(d), (g) (2000) (providing for separate appropriations to pay Active and Reserve Component personnel); 32 U.S.C. § 107 (2000) (limiting the use of National Guard appropriations to those expenses necessary to conduct National Guard operations); see also 31 U.S.C. 1301(a) (2000) (providing that appropriations shall only be applied to the objects for which Congress made the appropriations, unless the law provides otherwise).

57. MOA, *supra* note 25, § X.

58. *Id.* § X, para. A.

59. *Id.* § X, para. B.2.

60. *Id.* § X, para. B.3.

61. Telephone Interview with Captain Ryan Arne, 24th Infantry Division Training Officer (Jan. 3, 2003) [hereinafter Captain Arne Interview].

62. See Fort Riley, Kansas, *24th Infantry Division (Mech)*, at <http://www.riley.army.mil/Units/HQ24ID> (last visited Jan. 6, 2003).

63. Captain Arne Interview, *supra* note 61.

64. U.S. DEP’T OF ARMY, FIELD MANUAL 7-30, THE INFANTRY BRIGADE para. 1-4 (3 Oct. 1995).

65. U.S. DEP’T OF ARMY, FIELD MANUAL 71-3, THE ARMORED AND MECHANIZED INFANTRY BRIGADE § II, fig. 1-3 (8 Jan. 1996).

66. This cadre consists of officers and enlisted soldiers in the AGR who serve on active duty under either Title 10 or Title 32. 10 U.S.C. § 12310 (2000); 32 U.S.C. § 502(f) (2000). Their primary role is to help organize, administer, recruit, instruct, or train the Reserve Component. Information Paper, Office of The Judge Advocate General, Administrative Law Division, subject: Use of Active Guard and Reserve (AGR) Soldiers (29 Aug. 2000) (on file with author). In the integrated divisions, the AGR personnel are National Guardsmen on active duty in a Title 32 status and fall under the state chain of command. See 32 U.S.C. § 502.

brigade legal sections provide administrative law services, military justice, legal assistance, and operational law support to their brigades.⁶⁹

The brigade legal sections must be competent in the full spectrum of legal issues that impact Army operations, as well as state law issues that affect their brigades. Because the brigades are independently deployable, the brigade judge advocates serve as the primary sources of legal advice and support to their commanders. Brigades from the integrated divisions have participated in rotations at the Army's combat training centers⁷⁰ and deployments to places as diverse as Egypt⁷¹ and Bosnia.⁷² The brigade legal sections have participated in all of these operations, providing legal assistance to deploying soldiers and sending deployed brigade operational law teams (BOLTs)⁷³ to the combat training centers.⁷⁴

Legal Issues and Challenges in the Integrated Divisions

The unique nature of the integrated division's structure regularly presents its judge advocates with unique legal issues. The following examples are based primarily on experiences at the 24th Infantry Division, but they represent issues that commonly arise in the integrated divisions.

Criminal Jurisdiction Over Soldiers in National Guard Brigades

The greatest challenge commanders and their judge advocates face in maintaining discipline within integrated units is untangling the complexities of criminal jurisdiction in those units. Jurisdiction over a soldier in an integrated division depends on the soldier's duty status. The division commander has no disciplinary authority over soldiers in Title 32 status, but may exercise discipline over those in a Title 10 status. The MOA recognizes this distinction, but it does not always draw clear lines of separation between the different commanders' jurisdictional provinces.⁷⁵ Determining whether the division commander or TAG will have jurisdiction, however, may still not resolve the ultimate question of which commander has authority.

Most jurisdictional questions concerning Title 32 forces training within the integrated divisions are fairly straightforward. When a soldier in a Title 32 status is suspected of misconduct, the state chain of command will have jurisdiction, unless the accused has since been placed on Title 10 status.⁷⁶ Both components, of course, should coordinate their investigations with each other to avoid duplicating their efforts.⁷⁷ When the 30th Heavy Separate Brigade (HSB) held its 2001 annual training, for example, an active-duty 24th Infantry Division headquarters soldier and a National Guard soldier from 30th HSB were suspected of misconduct. The division G3, an Active Component primary staff officer, appointed an investigating officer to examine the allegations.⁷⁸ Judge advocates from the division and brigade ensured that the brigade com-

67. The 24th Infantry Division has an SJA, a Chief of Operational Law, a legal assistance attorney, and two NCOs. E-mail from Chief Warrant Officer Two Richard Flores, Legal Administrator, 24th Infantry Division and Fort Riley, to author (Dec. 19, 2002) (on file with author) [hereinafter Chief Warrant Officer Two Flores E-mail]. The 7th Infantry Division has an SJA, a Deputy SJA, a Chief of Administrative Law, a Paralegal Sergeant Major, Chief Paralegal NCO, and a Paralegal NCO. E-mail from Chief Warrant Officer Two Jeff Martin, Legal Administrator, 7th Infantry Division and Fort Carson, to author (Dec. 20, 2002) (on file with author) [hereinafter Chief Warrant Officer Two Martin E-mail].

68. Chief Warrant Officer Two Flores E-mail, *supra* note 67; Chief Warrant Officer Two Martin E-mail, *supra* note 67.

69. Chief Warrant Officer Two Flores E-mail, *supra* note 67; Chief Warrant Officer Two Martin E-mail, *supra* note 67.

70. See, e.g., Terry Joyce, *S.C. Guard Trains for Desert Warfare*, CHARLESTON POST & COURIER, July 30, 2000 (discussing the deployment of the 218th HSB, part of the 24th Infantry Division, to the NTC); Rob Martindale, *Oklahoma Troops Endure Intensities of Simulation*, TULSA WORLD, June 15, 2002 (discussing the deployment of the 45th SIB, part of the 7th Infantry Division, to the Joint Readiness Training Center (JRTC)).

71. *Arkansas Unit Officially Activated for Duty in Egypt*, ASSOCIATED PRESS STATE & LOCAL WIRE, Oct. 6, 2001, LEXIS, News Group File (discussing the deployment of a battalion from the 39th SIB, part of the 7th Infantry Division, to the Sinai).

72. Drew Brown, *Troops Head for Bosnia*, MACON TELEGRAPH, Mar. 19, 2001, LEXIS, News Group File (discussing the deployment of the 48th HSB, part of the 24th Infantry Division, to Bosnia for peacekeeping duty).

73. U.S. DEP'T OF ARMY, FIELD MANUAL 27-100, LEGAL SUPPORT TO OPERATIONS glossary (1 Mar. 2000).

74. Telephone Interview with Captain James Smith, Operational Law Attorney, 218th HSB (M) (Apr. 25, 2002) (discussing role of 218th BOLT during a recent NTC rotation) [hereinafter Captain Smith Interview].

75. See generally MOA, *supra* note 25, § IX, para. A.

76. *Id.* § IX, paras. A.1-A.2.

77. *Id.* § IX.

mander was fully informed of the progress of the investigation, that the investigation complied with the requirements of Army regulations and the MOA, and that both soldiers and all of the respective chains of command had access to legal advice. The brigade commander made the final decision of what, if any, punishment was appropriate.⁷⁹

Active Component officers who command National Guard units face another potential complication—statutory restrictions on their authority. As of this writing, one battalion of the 30th HSB (M), a North Carolina National Guard unit, is commanded by an Active Component lieutenant colonel with commissions from both the Regular Army *and* the North Carolina National Guard.⁸⁰ North Carolina's Code of Military Justice prohibits officers with federal commissions from imposing non-judicial punishment on its National Guard soldiers, even when those officers also have state commissions.⁸¹ Moreover, the Posse Comitatus Act prohibits any commander with a federal commission from commanding soldiers during state missions that would involve law enforcement functions.⁸² Ironically, a National Guard commander called to active duty to command an Active Component unit would be in a Title 10 status; therefore, these restrictions would not apply to such a commander.⁸³

When a brigade task force is assembled from multiple states, commanders must untangle intersecting lines of criminal jurisdiction before taking disciplinary action. In July 2000, for example, the 218th HSB from the South Carolina National

Guard deployed to the NTC for a rotation.⁸⁴ The task force of nearly 5000 soldiers included soldiers from twenty-six states, all under the command of a South Carolina National Guard brigadier general. Because the soldiers were training for their federal mission while in Title 32 (state) status, the brigade commander had disciplinary authority over the soldiers from South Carolina only. When allegations of misconduct arose involving soldiers from other states, the South Carolina judge advocates soon learned that the MOA does not sort out which commander has disciplinary authority. The task force judge advocates ultimately had to coordinate their investigative and disciplinary actions with judge advocates and commanders from the other states.⁸⁵ Fortunately, the most recent change to *AR 27-10* at least addresses multi-component disciplinary issues of this kind; National Guard commanders must forward their recommendations for disciplinary action against soldiers from other states to the soldiers' home state chains of command.⁸⁶

Active duty judge advocates should work closely with their AGR counterparts when questions of status and jurisdiction arise. It is the AGR attorneys who are the mostly likely to have confronted and researched similar issues in the past, and to have a firm grasp of how to determine a soldier's status.

Funding the Mission

Commanders of integrated divisions must also cope with unique and often inflexible funding streams. It has proven eas-

78. Telephone Interview with Lieutenant Colonel Randall L. Keys, Staff Judge Advocate, U.S. Army Aviation Center and Fort Rucker, former Deputy Staff Judge Advocate, Fort Riley, Kansas, from June 2000 to June 2002 (Dec. 18, 2002) [hereinafter Lieutenant Colonel Keys Interview]; *see generally* U.S. DEP'T OF ARMY, REG. 15-6, PROCEDURE FOR INVESTIGATING OFFICERS AND BOARDS OF OFFICERS para. 2-1(a)(2)(c) (30 Sept. 1996).

79. Lieutenant Colonel Keys Interview, *supra* note 78.

80. 32 U.S.C. § 315(a) (2000) (authorizing Regular Army officers to command Army National Guard units, or serve them in other key positions). Pursuant to an MOA between Deputy Chief of Staff for Personnel (DCSPER), FORSCOM, and the Director, Army Reserve and National Guard (ARNG), those officers also receive a dual commission in the state National Guard. Memorandum of Agreement Between Deputy Chief of Staff for Personnel, FORSCOM, and Director, Army Reserve and National Guard, Annex A (Legal) (undated copy of Annex on file with the author).

81. N.C. GEN. STAT. § 127A-51 (2002) (stating that any commander of the National Guard, not in the service of the United States, can impose non-judicial punishment). The North Carolina National Guard interprets this provision to mean that an officer holding a dual federal and state commission cannot impose non-judicial punishment on his soldiers. Telephone Interview with Lieutenant Colonel Wayne Woodard, North Carolina State Judge Advocate (May 5, 2000). This is North Carolina's interpretation of its own state code. Other states may interpret their own military justice codes differently.

82. The Posse Comitatus Act states:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.

18 U.S.C. § 1385 (2000).

83. One of Fort Riley's armor battalions, 2d Battalion, 34th Armor, is commanded by a National Guard officer brought on active duty from the Texas National Guard. *See* Press Release, Fort Riley, Kansas, National Guard Officer Takes Command of Active Duty Unit (June 2001) (on file with author).

84. Master Sergeant Bob Haskell & Sergeant First Class Dan Brazell, *Brigade of New Active Component/RC Division Goes to Battle at NTC*, ARMY NEWS SERVICE, July 23, 2000, available at <http://www.dtic.mil/armylink/news/Jul2000/a20000725ntc.html>.

85. Captain Smith Interview, *supra* note 74.

86. *AR 27-10*, *supra* note 55, para. 21-13(c).

ier to integrate soldiers than money. Examples of funding questions include purchase authority for physical training uniforms for a deploying National Guard unit,⁸⁷ travel funding for training purposes, and the funding of a barracks upgrade to house a unit preparing to deploy overseas.⁸⁸ Some of the statutory fiscal limits can be frustrating; for example, there is no authority for the Active Component division headquarters to purchase and issue Rucksack-Deployable Law Office and Law Library (RDL) systems to their National Guard brigade judge advocate sections.⁸⁹

The barracks upgrade issue illustrates how complicated fiscal issues can become. As part of a recent rotation to Bosnia under the command of the 3d Infantry Division, the 48th HSB was scheduled to conduct lengthy post-mobilization training at Fort Stewart, Georgia. The brigade's soldiers occupied barracks that were leased by the Georgia National Guard from Fort Stewart. The barracks, traditionally used for summer training, were in many ways inadequate for the mid-winter post-mobilization training the brigade was required to conduct. Several months before the mobilization, the brigade and the 24th Infantry Division recognized that the barracks would need some upgrades. Fiscal difficulties existed at many levels: the Georgia National Guard had difficulties expending state funds for improvements related to a federal mission; Fort Stewart was reluctant to spend its money to upgrade barracks under lease to the Georgia National Guard; and the 24th Infantry Division did not have funds to upgrade barracks at another installation for a unit that would not be under its command after mobilization. Ultimately, comptrollers were able to use some contingency operations funds to provide minimal barracks upgrades.⁹⁰ If the integrated divisions are to become independently deployable entities, they will need more flexibility to carry out their missions. New legislation may be the only way to provide this flexibility.

National Guard soldiers need help with many of the same legal assistance issues as their Active Component counterparts, including debtor-creditor issues, divorces and separations, reports of survey, and Soldiers' and Sailors' Civil Relief Act issues. Unlike their active-duty counterparts, however, National Guard soldiers also worry about job security when they deploy for major exercises or mobilize for federal missions. Active Component judge advocates must familiarize themselves with The Uniformed Services Employment and Re-Employment Rights Act,⁹¹ which helps National Guard and Reserve soldiers protect their jobs while they are gone.⁹² Active duty judge advocates should not overlook their AGR counterparts, who often have extensive experience advising National Guard soldiers and their commanders.

Conclusion

The integrated divisions represent the latest step in the Army's effort to evolve into a truly integrated force. Statutory and constitutional differences between the Active Component and the National Guard still greatly complicate even basic military operations. Although an MOA between the National Guard Bureau, FORSCOM, and the contributing states' TAGs has done much to sort out the conflicting responsibilities of multiple commands, underlying constitutional tensions between the state and federal roles of the National Guard, as well as statutory funding differences, continue to present commanders with administrative difficulties. Although the brigades are independently deployable, the divisions' headquarters have TRO responsibilities to prepare them for war. At the same time, state TAGs have a responsibility to keep the brigades ready to perform their state missions. Judge advocates at the brigade, state, and division levels must be involved at every step of the process to help commanders overcome the unique legal challenges of integrated divisions.

87. Telephone Interview with Major James Friend, Fort Riley Chief of Administrative Law, and Captain Chris Olive, 7th Infantry Division Deputy Staff Judge Advocate (Jan. 26, 2001) (notes on file with author).

88. E-mail from Major Gerald Nixon, G8, 24th Infantry Division, to author (Oct. 12, 2001) (on file with author) (discussing the fiscal issues involved with obtaining barracks upgrades at Fort Stewart for a National Guard brigade mobilizing for a deployment to Bosnia) [hereinafter Major Nixon E-mail].

89. *Id.* In the end, the brigades were forced to compete with other National Guard units within their states to field some of this equipment. *Id.* The Purpose Statute, 31 U.S.C. 1301(a), frequently limits commanders' fiscal options. The effect of this law is that funds Congress appropriates for the Active Component are rarely available to fund the needs of the National Guard. *See generally id.*

90. Major Nixon E-mail, *supra* note 88.

91. 38 U.S.C. §§ 4301-4333 (2000).

92. *Id.* §§ 4311-4313.

Making the Appellate Record: A Trial Defense Attorney's Guide to Preserving Objections—the Why and How

Lieutenant Colonel Patricia A. Ham¹

Introduction

Your client confessed.

As his defense counsel, you immediately realize that unless his statement is suppressed, your client has no chance of acquittal. If it is suppressed, the government's case will fall apart, and it will have to dismiss the charges against your client. As luck would have it, you have a "sure-fire" suppression motion based on what appears to be a clear violation of your client's constitutional rights. You draft a brilliantly researched, powerful, persuasive motion to suppress, re-interview the witnesses, and prepare them for the motion hearing.

The two-day hearing proceeds spectacularly, with your witnesses and client testifying exactly as you anticipated. Your cross-examinations of the government witnesses were scorching; the hapless trial counsel struggled to keep up as you argued brilliantly. You sit back and wait for the military judge to rule in your favor, for the admiring congratulations of your fellow defense counsel, and for a much-needed weekend off.

The military judge denies your motion. Your client, defenseless, decides to plead guilty in exchange for a pretrial agreement. You assume, of course, that the motion is still preserved for appeal; you litigated it fully, with witnesses, briefs, and arguments, and the military judge made findings of fact and conclusions of law. Surely the appellate courts will see the manifest error of the judge's ruling, and your client (and you) will be vindicated.

Is this issue preserved for appeal if your client pleads guilty? Have you now "made the appellate record?" What if you have not? Can your client obtain relief from the appellate courts anyway? The answer to all these questions is most likely "no". By entering an unconditional guilty plea, your client waived his right to consideration of the suppression motion on appeal under almost all circumstances.²

This article explains how defense counsel can "make the appellate record" by preserving issues properly; it also discusses the ramifications of the failure to do so. Part I of this article answers the question, "Why make the record for appeal?" It explains the doctrine of waiver and why it exists, including a discussion of Military Rule of Evidence (MRE) 103,³ which requires counsel to state a timely "specific ground of objection" to preserve an issue for appeal.⁴ This section then explains appellate standards of review, the different degrees of deference appellate courts give to trial judges' rulings, and why a basic understanding of these appellate linchpins is essential for trial practitioners. The section then discusses "harmless error," the standard appellate courts apply when the defense counsel objects at trial, and "plain error," which the courts apply when the defense counsel *does not* object. These standards define the burdens of proof on appeal, as well as the distribution of that burden. Finally, the section discusses Article 59(a), Uniform Code of Military Justice (UCMJ). This critical provision requires "material prejudice to a substantial right" of the accused to merit relief on appeal, regardless of whether the defense counsel lodges a proper objection at trial.⁵

Part II of this article discusses "Ten General Observations on Making the Appellate Record." This section includes practical observations and pitfalls for trial practitioners who wish to preserve issues for appeal. Finally, Part III provides a "how to" guide to preserving selected specific objections during the pre-trial, trial, and post-trial stages. It discusses Article 32 and discovery issues, motions in limine, challenges to panel members, evidentiary objections during trial, instructions, and post-trial representation. This final section demonstrates how trial practitioners would benefit from examining many of these issues through an appellate lens. Structuring arguments at trial with the knowledge and assistance of the principles employed during appellate review can help counsel to "make the appellate record" effectively.

1. LL.M. student, Criminal Law, George Washington University. This article is based on a presentation by the author at the November 2001 Tri-Regional Trial Defense Service conference in Las Vegas, Nevada, later expanded and updated to satisfy a writing requirement for a course entitled "Comparative Military Law," taught by Judge H.F. "Sparky" Gierke, U.S. Court of Appeals of the Armed Forces, and COL (Ret.) Fran Gilligan at George Washington University.

2. MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 910(j) (2002) [hereinafter MCM]. *But cf.* United States v. Smith, 56 M.J. 653 (Army Ct. Crim. App. 2001) (considering the merits of a suppression motion on appeal despite an unconditional guilty plea at trial; the appellant asserted error in the admission of unsuppressed evidence as aggravation in presentencing proceedings, and the government did not argue waiver); United States v. Hinojosa, 33 M.J. 353, 353 (C.M.A. 1991); United States v. Streetman, 43 M.J. 752, 755 (A.F. Ct. Crim. App. 1995); *see also* Estelle v. Smith, 451 U.S. 454, 468 n.12 (1981).

3. MCM, *supra* note 2, MIL. R. EVID. 103.

4. *Id.* MIL. R. EVID. 103(a)(1).

5. UCMJ art. 59(a) (2000).

I. Why Make the Record for Appeal?

A. The Waiver Doctrine

Why is it important to “make” an appellate record by properly preserving issues at trial? The answer lies in the doctrine of waiver. Simply stated, the failure to properly preserve an issue at trial “waives” the issue for appeal. This means that an appellate court is unlikely to consider the issue. In other words, the accused has almost no chance of relief on appeal.⁶

A judicial finding of waiver will often prove dispositive of the case in question. The decision that a legal right has been waived forecloses relief, even in cases that might otherwise have been decided differently. Courts may balance the advantages or disadvantages of this decision against other social policies in determining whether a finding of waiver is appropriate; however, once a right is judged to have been waived it is a nullity, and the issue is at an end.⁷

Although the classic definition of waiver is the “intentional relinquishment or abandonment of a known right,”⁸ many situations described as “waiver” are actually “forfeiture,” which the Supreme Court defines as “the failure to make a timely

assertion of a right.”⁹ This latter definition is a better description for the mere failure to object properly at the appropriate time. The importance of this distinction is that issues that counsel intentionally waive will never merit relief.¹⁰ As the Supreme Court stated,

Deviation from a legal rule is “error” unless the rule has been waived. . . . Mere forfeiture, as opposed to waiver, does not extinguish an “error” If a legal rule was violated during the [trial] court proceedings, and if the defendant did not waive the rule, there has been an “error” . . . despite the absence of timely objection.¹¹

Even if there is error, forfeited or not, that certainly does not mean the accused gets any relief; but that discussion comes later.¹²

Where the defense counsel forfeits an issue (but does not waive it), an appellate court may, in an extraordinary case, grant relief under the doctrine of plain error, despite a lack of objection at trial, to avoid manifest injustice.¹³ A “raise or waive rule” is “typically known as a rule of forfeiture . . . [as] it is well established that such a rule does not absolutely preclude appellate review.”¹⁴

6. The doctrine of plain error, employed to determine whether a waived (or forfeited) issue merits relief, is discussed *infra* at notes 95-104.

7. Edward L. Rubin, *Toward a General Theory of Waiver*, 28 UCLA L. REV. 478, 479 (1981).

8. *Johnson v. Zerbst*, 403 U.S. 458, 464 (1938). According to Rubin,

Johnson did not originate this formulation. The *Johnson* Court was merely paraphrasing the standard common law definition of waiver—a definition which courts had experienced considerable difficulty in applying. . . . For these reasons, the Restatement of Contracts abandoned the formula as “inexact” six years before the *Johnson* case. . . . Not surprisingly, the *Johnson* definition has created the same difficulties in constitutional adjudication that it did in its *quondam* common law career.

Rubin, *supra* note 7, at 481-82 (footnotes omitted). Because of the problems of the *Johnson* definition, in particular in applying the “knowing” and “intentional” concepts, Rubin posits that “the most general definition of waiver is not the intentional relinquishment of a known right, but simply a relinquishment of the right.” *Id.*; see *Johnson*, 403 U.S. at 483-84.

9. *United States v. Olano*, 507 U.S. 725, 733 (1993).

10. *Id.* The Supreme Court gives the following example to illustrate this principle:

[A] defendant who knowingly and voluntarily pleads guilty . . . cannot have his conviction vacated by a court of appeals on the ground that he ought to have had a trial. Because the right to trial is waivable, and because the defendant who enters a valid guilty plea waives that right, his conviction without a trial is not “error.”

Id.

11. *Id.* at 733-34. This distinction between “waiver” and “forfeiture,” in much more common use since the *Olano* decision, would still not satisfy Rubin, who views the distinction as a “multiplication of legal rules beyond necessity.” Rubin, *supra* note 7, at 483. “The legal problem of waiver forms a distinct part of the larger legal issue of how individual rights are created, exercised, and lost.” *Id.* Waiver, in his view, is the issue of how rights “can be given up.” *Id.* As such, as a “discrete legal problem, it demands a single answer.” *Id.*

12. See *infra* notes 81-85.

13. The “plain error” doctrine is discussed more fully *infra* at notes 95-104 and accompanying text.

14. *United States v. Chapa*, 57 M.J. 140, 146 (2002) (Sullivan, J., concurring in part and in the result).

In practice, however, most cases in military courts continue to use the terms “forfeiture” and “waiver” interchangeably, and do not distinguish between the two concepts for purposes of appellate review, including whether an error at trial merits relief under the plain error doctrine.¹⁵ In fact, the Court of Appeals for the Armed Forces (CAAF) recognized during its most recent term that “waiver,” as used in Rule for Courts-Martial (RCM) 905(e),¹⁶ is “synonymous with the term ‘forfeiture’ used by the Supreme Court in *United States v. Olano*.”¹⁷

In any event, very few issues are not subject to waiver (or forfeiture). The Supreme Court has “articulated a general rule that presumes the availability of waiver,”¹⁸ and has “recognized that ‘the most basic rights of criminal defendants are subject to waiver.’”¹⁹ There are different requirements to constitute waiver, depending on the right at issue:

What suffices for waiver depends on the nature of the right at issue. Whether the defendant must participate personally in the waiver; whether certain procedures are required for waiver; and whether the defendant’s choice must be particularly informed

or voluntary, all depend on the right at stake. For certain fundamental rights, the defendant must personally make an informed waiver. For other rights, however, waiver may be effected by action of counsel. . . . As to many decisions pertaining to the conduct of the trial the defendant is deemed bound by the acts of his lawyer-agent and is considered to have notice of all facts, notice of which can be charged upon the attorney. Thus, decisions by counsel are generally given effect as to what arguments to pursue, what evidentiary objections to raise, and what agreements to conclude regarding the admission of evidence. Absent a demonstration of ineffectiveness, counsel’s word on such matters is the last.²⁰

The category of waivable issues primarily discussed in this article is that vast number “effected by action of counsel.”²¹

Military practice recognizes very few issues that are not subject to waiver.²² They include jurisdiction,²³ failure to state an

15. See, e.g., *United States Quiroz*, 55 M.J. 334, 338 (2001); *United States v. Green*, 55 M.J. 76, 80, cert. denied, 534 U.S. 998 (2001); *United States v. Brown*, 50 M.J. 262, 268 (1999); *United States v. Simoy*, 50 M.J. 1, 2 (1998); *United States v. Combs*, 47 M.J. 330, 334 (1997) (Cox, J., concurring); *United States v. Carter*, 40 M.J. 102, 104 (1994); *United States v. Schneider*, 38 M.J. 387, 394 (C.M.A. 1993), cert. denied, 511 U.S. 1106 (1994). But see *United States v. Scalzone*, 54 M.J. 114, 118 (2000) (Cox, J., concurring) (distinguishing between waiver and forfeiture); *United States v. Harwood*, 46 M.J. 26, 28 (1997); *United States v. Toro*, 37 M.J. 313, 320 (C.M.A. 1993) (Sullivan, C.J., concurring); *United States v. Strachan*, 35 M.J. 362, 364 (C.M.A. 1992), cert. denied, 507 U.S. 990 (1993). The Army Court of Criminal Appeals (ACCA) affirmatively recognizes that the waiver rules in the military incorporate both forfeiture and waiver. *United States v. Thompson*, 37 M.J. 1023, 1026 n.3 (A.C.M.R. 1993) (citing *Toro*, 37 M.J. at 362). At least one intermediate military appellate court affirmatively declined to distinguish between waiver and forfeiture. *United States v. Bolerjack*, No. 98-01500, 1999 CCA LEXIS 244, at *5 (N-M. Ct. Crim. App. Aug. 31, 1999) (unpublished). But see *United States v. Valliere*, No. 96-00975, 1997 CCA LEXIS 298, at *4-6 (N-M. Ct. Crim. App. May 5, 1997) (unpublished) (holding that failure to object under the circumstances constituted mere forfeiture, and not waiver).

16. Rule for Courts-Martial 905(e) states:

(e) Effect of failure to raise defense or objections. Failure by a party to raise defenses or objections or to make motions or requests which must be made before pleas are entered under subsection (b) of this rule shall constitute waiver. The military judge for good cause shown may grant relief from the waiver. Other motions, requests, defenses or objections, except lack of jurisdiction or failure or a charge to allege an offense, must be raised before the court-martial is adjourned for that case, and unless otherwise provided in this Manual, failure to do so shall constitute waiver.

MCM, *supra* note 2, R.C.M. 905(e).

17. *Chapa*, 57 M.J. at 142 n.4. At least one recently retired CAAF judge bemoans this linguistic imprecision. In *Chapa*, Judge Sullivan recently wrote:

I do not agree with the majority that this Court should continue to use the word “waiver” when it means “forfeiture.” As Judge Posner has pointed out, “the distinction between waiver and forfeiture is important to the operation of an adversary system, which is another reason for avoiding use of the word ‘waiver’ to designate both concepts.” Precision, not imprecision, should be the hallmark of this Court in the area of plain error.

Id. at 147 n.3 (Sullivan, J., concurring in part and in the result) (citations omitted).

18. *New York v. Hill*, 528 U.S. 110, 114 (2000) (citing *United States v. Mezzanatto*, 513 U.S. 196, 200-01 (1995)).

19. *Id.* (quoting *Peretz v. United States*, 501 U.S. 923, 936 (1991)).

20. *Id.* at 114-15 (citations and internal quotations omitted). See also *United States v. Collins*, 41 M.J. 428, 430-31 (Cox, J., concurring), wherein Judge Cox advocated that “military due process” required intentional waivers of constitutional and statutory rights, even while acknowledging that the Supreme Court did not require them: “[I]f an accused wants to waive a statutory or constitutional right, we should be able to see from the record of trial that the accused knowingly gave up that right.” *Id.* at 431. Judge Cox did not advocate the same MRE 103 procedure for “trial tactics and errors.” *Id.* Judge Baker, new to the CAAF in 2002, may also support a similar view. He has expressed the opinion that, “where a liberty interest is at stake, . . . I would not rely on a mechanical application of waiver.” *Chapa*, 57 M.J. at 143 (Baker, J., concurring in part and in the result) (discussing the waiver of credit under RCM 305(k)).

offense²⁴ (although appellate courts view this issue with a jaundiced eye if counsel do not raise it at trial),²⁵ incompetence to serve as a member under the provisions of Article 25, UCMJ,²⁶ adjudicative (versus accusatory) command influence,²⁷ and Article 13 punishment (which is not waived in the absence of an “affirmative, fully developed waiver on the record”).²⁸ Practically all other issues are subject to waiver. “The principle of waiver and forfeiture is well understood in the context of trial. The *Manual for Courts-Martial* is replete with requirements that trial defense counsel timely declare an objection lest the issue be forfeited.”²⁹

These “raise or waive” issues include the following violations of the Rules for Courts-Martial: credit for violations of the procedures to place an accused into pretrial confinement;³⁰ objections to the Article 32 investigation;³¹ objections to either the taking of a deposition, or to questions or evidence presented

at the deposition;³² failure to lodge objections at the appropriate time;³³ failure to place matters agreed upon in an out-of-court conference in the record orally or in writing;³⁴ challenges to the military judge (although some bases for challenge are not waivable);³⁵ an untimely request (or withdrawal of a request) for trial by enlisted panel or by military judge alone.³⁶ Other “raise or waive” issues include motions which counsel must raise *before entering a plea*, including defects in preferral, forwarding, investigating, or referral of charges and specifications; motions to suppress; motions for discovery or production of witness; motions to sever; and motions for individual military counsel.³⁷ Counsel must raise certain motions, requests, defenses, or objections *before the court-martial is adjourned*,³⁸ such as the right to speedy trial under RCM 707; the statute of limitations; double jeopardy; motions asserting that the prosecution is barred by a grant of immunity, a presidential pardon, or the like;³⁹ allegations of improper selection of members (in most

21. *Id.*

22. See generally MCM, *supra* note 2, R.C.M. 705(c); Nancy Jean King, *Priceless Process: Nonnegotiable Features of Criminal Litigation*, 47 UCLA L. REV. 113 (1999). Additional issues that may not be bargained away (waived) by pretrial agreements, and the propriety of those prohibitions are beyond the scope of this article.

23. MCM, *supra* note 2, R.C.M. 907(b)(1).

24. *Id.* At least one scholar views the “longevity of this indeterminate concept [as] remarkable, especially considering the beating it has taken” in the Supreme Court. King, *supra* note 22, at 143. Professor King believes that “[c]learly another concept is needed to serve as a coherent expression of what features of a particular error render it appropriate for review despite express waiver by the parties.” *Id.* at 144 (footnote omitted).

25. *United States v. Watkins*, 21 M.J. 208, 209 (C.M.A. 1986) (holding that specifications challenged for the first time on appeal are “liberally constru[ed] in favor of validity”).

26. MCM, *supra* note 2, R.C.M. 912(f)(1)(A).

27. See *id.* R.C.M. 907(b)(1); *United States v. Weasler*, 43 M.J. 15 (1995) (holding that defense counsel can waive accusatory command influence); *United States v. Hamilton*, 41 M.J. 32 (C.M.A. 1994); see also *United States v. Richter*, 51 M.J. 213, 224 (1999) (“Defects in preferring and forwarding charges [accusatory command influence] are waived if not raised at trial, unless the failure to raise the issue is itself the result of command influence.”); cf. *United States v. Baldwin*, 54 M.J. 308, 310 n.2 (2001) (holding that “[w]e have never held that an issue of unlawful command influence arising during trial may be waived by a failure to object or call the matter to the trial judge’s attention,” in a case alleging that the command held meetings that were intended to influence members’ actions in the trial of an officer).

28. *United States v. Huffman*, 40 M.J. 225, 227 (C.M.A. 1994) (holding that Article 13 issues were non-waivable, but viewing counsel’s failure to object as “strong evidence” that there was no Article 13 violation). See also *United States v. Scalalone*, 54 M.J. 114 (2000).

29. *United States v. Shavrnock*, 47 M.J. 564, 566 (A.F. Ct. Crim. App. 1997), *aff’d in part, set aside in part*, 49 M.J. 334 (1998).

30. MCM, *supra* note 2, R.C.M. 305(k); *United States v. Chapa*, 57 M.J. 140 (2002).

31. MCM, *supra* note 2, R.C.M. 405(k).

32. *Id.* R.C.M. 702(h), 702(c)(3)(D) (stating that when the convening authority denies a request for deposition, failure to renew the request before the military judge waives the issue).

33. *Id.* R.C.M. 801(g).

34. *Id.* R.C.M. 802(b).

35. *Id.* R.C.M. 902(e); *United States v. Howard*, 50 M.J. 469, 470 (1999); cf. *United States v. Quintanilla*, 56 M.J. 37, 77 (2001) (holding that the defense counsel does not waive a challenge against a military judge unless the failure to challenge the judge is “preceded by a full disclosure on the record of the basis for disqualification”).

36. MCM, *supra* note 2, R.C.M. 903(e).

37. *Id.* R.C.M. 905(c).

38. *Id.* R.C.M. 905(e).

instances);⁴⁰ and challenges for cause⁴¹ or peremptory challenges.⁴² Other issues have their own specific points when they must be raised or waived. Counsel must object to improper argument on findings before the beginning of instructions on findings.⁴³ Objections to instructions or omissions of instructions on findings must be raised before members close to deliberate on findings.⁴⁴ Objections to sentencing instructions must be raised before the members close to deliberate on sentence.⁴⁵ Counsel must submit clemency matters⁴⁶ and comment on matters in the Staff Judge Advocate's post-trial recommendation⁴⁷ within the specific deadlines set by the Rules for Courts-Martial.

In addition to all of these waiver provisions, the Military Rules of Evidence also list several specific issues the accused must raise *before entering a plea* to avoid waiver, including motions to suppress confessions,⁴⁸ motions to suppress evidence obtained by an unlawful search or seizure,⁴⁹ and motions to suppress eyewitness identifications.⁵⁰ The military judge may exercise his discretion to consider untimely motions if the accused demonstrates good cause.⁵¹

Military Rule of Evidence 103, however, contains the most comprehensive and sweeping evidentiary waiver rules.⁵² Military Rule of Evidence 103(a) states three basic but critical points. First, even where a defense counsel makes a proper objection and the military judge erroneously excludes or admits

the evidence, no relief is available “unless the ruling materially prejudices a substantial right of” the accused.⁵³ Second, the defense counsel must object to the admissibility of evidence the defense seeks to exclude. Finally, if the military judge excludes evidence that the defense seeks to admit, the defense counsel must comply with MRE 103's mandate to preserve the defense position with respect to that evidence. This rule speaks for itself:

(a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless the ruling materially prejudices a substantial right of a party, and

(1) *Objection.* In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) *Offer of proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the military judge by offer or was apparent from the context within which the questions were asked.⁵⁴

39. *Id.* R.C.M. 907(b)(2). *But see* United States v. Ragard, 56 M.J. 852, 854 n.9 (Army Ct. Crim. App. 2002) (considering the merits of a double jeopardy claim raised and denied before trial, followed by guilty plea; “because the issue could be resolved on the existing record, the appellant’s guilty plea does not bar his claim”).

40. *Id.* R.C.M. 912(b)(3).

41. *Id.* R.C.M. 912(f)(4).

42. *Id.* R.C.M. 912(g)(2).

43. *Id.* R.C.M. 919(c).

44. *Id.* R.C.M. 920(f).

45. *Id.* R.C.M. 1005(f).

46. *Id.* R.C.M. 1105(d).

47. *Id.* R.C.M. 1106(f)(6).

48. *Id.* MIL. R. EVID. 304(d)(5) (stating that an unconditional guilty plea waives all motions under this rule).

49. *Id.* MIL. R. EVID. 311(i) (stating that an unconditional guilty plea waives all motions under the Fourth Amendment and MRE 311-317).

50. *Id.* MIL. R. EVID. 321(g) (stating that an unconditional guilty plea waives all issues under this rule).

51. *Id.* MIL. R. EVID. 311(d)(2)(A), 321(c)(2)(A). *But see* United States v. Pomarleau, 57 M.J. 351, 362 (2002) (holding that while RCM 311(d)(2)(A) is “salutary and provides for efficient administration of justice, it should be liberally construed in favor of permitting the accused the right to be heard fully in his defense”) (citing United States v. Coffin, 25 M.J. 32 (C.M.A. 1987)).

52. MCM, *supra* note 2, MIL. R. EVID. 103. The military rule is similar to its federal counterpart—one of the differences is that in the military, the test for prejudice incorporates UCMJ art. 59(a). *Cf.* FED. R. EVID. 103 (2000).

53. MCM, *supra* note 2, MIL. R. EVID. 103(a); *see also* UCMJ art. 59(a) (2000).

54. MCM, *supra* note 2, MIL. R. EVID. 103(a) (emphasis added).

In other words, for an accused to obtain relief from an evidentiary error, he must establish the existence of prejudice and a correct preservation of the objection under MRE 103(a). In the absence of the latter, the defense counsel has waived the issue; in the absence of the former, the court will consider the error, if any, to be harmless. In the absence of both, the appellate court will almost certainly not grant relief.

One cannot overstate the impact of MRE 103 on military trial practice. When it became effective in 1980,

[MRE 103] altered court-martial practice more than any other provision contained in the MRE. This is because MRE 103 places responsibility for raising and preserving evidentiary issues squarely and almost entirely upon counsel, not upon trial or appellate courts. As a result, if a proper record is not made at trial, no relief will be available on appeal.⁵⁵

According to one commentator, before the enactment of MRE 103(a), “appellate defense counsel were often permitted, if not encouraged by the court, to raise allegations of error having no foundation in the trial record. Military Rules of Evidence 103 clearly rejects this approach.”⁵⁶

Some judges lamented the military’s embrace of waiver. After Chief Judge Crawford accused him of “swim[ming] in a sea of paternalism,” now-retired Judge Cox responded:

[L]et me make clear, I may be a “paternalist,” but after 36 years of involvement with military justice and 22 years on the bench as a trial and appellate judge, I have witnessed for myself the experience level of the young military attorneys who represent our nation’s men and women. Notwithstanding the fact that, in the main, these young attorneys are zealous, conscientious, and try hard to fully represent their clients, they do not always get it right. Someone, somewhere, has to step in and insure that each service member is

afforded the protections that Congress intended they have. It saddens me that the Chief Judge of this Court, the Judge Advocate General of the Navy, and so many trial and appellate judges are quick to find “waiver” or some other legal theory to deny a service member relief if it is due.⁵⁷

Notwithstanding Judge Cox’s concerns, “current practice demonstrates that the CAAF’s past paternalistic tendencies have been abandoned.”⁵⁸ The general observations discussed later show just how sweeping this abandonment can be.

B. *The Rationale of Waiver*

Why do appellate courts apply waiver? “We begin with what we assume to be common ground—that piecemeal litigation is a bad thing, contributing to uncertainty, lack of finality and instability. . . . Avoidance of piecemeal litigation leads to the general rule that a federal appellate court does not consider an issue not passed upon below.”⁵⁹ This “general rule . . . is hardly new to appellate practice. Dating to the 17th century English writ of error, it is as firmly rooted in common sense as in the common law.”⁶⁰ The CAAF has commented on the theory of waiver as follows:

The waiver rule places responsibility upon defense counsel to object. . . . This rule is designed . . . to prevent defense counsel from remaining silent, making no objection, and then raising the issue on appeal for the first time, long after any possibility of curing the problem has vanished. It is important “to encourage all litigants to seek a fair and accurate trial the first time around.”⁶¹

The CAAF also asserted judicial economy as a rationale for the waiver rules when it stated that “[t]he purpose of these so-called ‘raise-or-waive’ Manual rules are [sic] to eliminate the expense to the parties and the public of rehearing an issue that could have been dealt with by a timely objection or motion at

55. STEPHEN A. SALTZBURG ET AL., *MILITARY RULES OF EVIDENCE MANUAL* 16 (4th ed. 1997).

56. *Id.* at 17 (footnote omitted).

57. *United States v. Scalapone*, 54 M.J. 114, 118 (2000).

58. SALTZBURG, *supra* note 55, at 18 (citing *United States v. Meyers*, 18 M.J. 347 (C.M.A. 1984) (requiring counsel to establish the parameters of all claimed errors during trial or lose them on appeal)).

59. *United States v. Shavrnich*, 47 M.J. 564, 566 (A.F. Ct. Crim. App. 1997).

60. *Id.* (citation omitted). See generally Robert J. Martineau, *Considering New Issues on Appeal: The General Rule and the Gorilla Rule*, 40 VAND. L. REV. 1023, 1025-28 (1987).

61. *United States v. Collins*, 41 M.J. 428, 428 (1995) (quoting *United States v. Causey*, 37 M.J. 308, 311 (C.M.A. 1993)); see also *United States v. Reist*, 50 M.J. 108, 110 (1999).

trial.”⁶² Professor La Fave suggested other rationales for waiver:

There are many rationales for the raise-or-waive rule: that it is a necessary corollary of our adversary system in which issues are framed by the litigants and presented to a court; that fairness to all parties requires a litigant to advance his contentions at a time when there is an opportunity to respond to them factually, if his opponent chooses to; that the rule promotes efficient trial proceedings; that reversing for error not preserved permits the losing side to second-guess its tactical decisions after they do not produce the desired result; and that there is something unseemly about telling a lower court it was wrong when it never was presented with the opportunity to be right. The principal rationale, however, is judicial economy. There are two components to judicial economy: (1) if the losing side can obtain an appellate reversal because of error not objected to, the parties and public are put to the expense of retrial that could have been avoided had an objection been made; and (2) if an issue had been raised in the trial court, it could have been resolved there, and the parties and public would be spared the expense of an appeal.

There is, of course, nothing in these rationales that requires that the “raise-or-waive” rule be absolute, and all jurisdictions recognize one or more situations in which issues not raised below will be considered on appeal. The plain error rule . . . is clearly the most important of these “exceptions” to the raise-or-waive rule. Several other exceptions . . . either do not cover as broad a range of

objections, or are not as widely accepted, but they nevertheless have a fairly significant impact upon the scope of review in many jurisdictions.⁶³

Professor Saltzburg also echoes these rationales. First, “allowing defense counsel to raise issues for the first time on appeal encourages and permits careless litigation at trial . . . [and] sloppy handling of issues.”⁶⁴ Second, the unfair advantage granted the defense, which could withhold issues at trial in order to litigate them by affidavits or otherwise on appeal, would deny the government “a fair chance to be heard on appeal.”⁶⁵ Third, “the absence of a proper record may lead to inappropriate decisions and inconsistent reasoning by an appellate court.”⁶⁶ Finally, the failure to raise and decide issues at the trial level makes appellate litigation more likely.⁶⁷

C. Standards of Review

*“The critical issue in this case is one not discussed by the parties: our standard of review.”*⁶⁸

Simply stated, the standard of review is the amount of deference an appellate court accords a trial judge’s decision. Most standards of review are highly deferential to trial judges’ rulings. They are absolutely critical in appellate practice, as the above quote demonstrates.⁶⁹

Trial practitioners may wonder, “Why do I need to be familiar with these appellate principles?” The answer is simple: appellate courts perform a completely different analysis of properly preserved objections and issues than of issues that are not properly preserved. Because of the degree of deference appellate courts traditionally grant to trial judges’ rulings through their standards of review, it is almost always difficult to obtain any relief on appeal, even with a properly preserved issue. Obtaining relief in the face of waiver or forfeiture, however, is exponentially harder.

62. *United States v. Huffman*, 40 M.J. 225, 229 (C.M.A. 1995) (Crawford J., dissenting in part and concurring in the result). *See also* *United States v. Collins*, 41 M.J. 428, 430 (1995) (quoting *United States v. Jones*, 37 M.J. 321, 323 (C.M.A. 1993)).

63. WAYNE LAFAVE ET AL., 5 CRIMINAL PROCEDURE § 27.5(c), at 923-24 (2d ed. 1999), *quoted in* *United States v. Chapa*, 57 M.J. 140, 146 (2002) (Sullivan, J., concurring in part and in the result).

64. SALTZBURG, *supra* note 55, at 17.

65. *Id.* at 17-18.

66. *Id.*

67. *Id.*; *see also* Martineau, *supra* note 60, at 1028-34.

68. *Fox v. Comm’r*, 718 F.2d 251, 253 (7th Cir. 1983), *quoted in* STEVEN ALAN CHILDRESS & MARTHA S. DAVIS, 1 FEDERAL STANDARDS OF REVIEW § 1.02, at 1-7 (3d ed. 1999).

69. *See* W. Wendell Hall, *Standards of Review in Texas*, 29 ST. MARY’S L.J. 351, 359 (1998) (“Standards of review are the cornerstone of an appeal, and these standards must be woven into the discussion of the facts and the substantive law in a manner which persuades the appellate court that the trial court erred.”), *quoted in* CHILDRESS & DAVIS, *supra* note 68, § 1.02, at 1-8 n.10.

For purposes of the following discussion—and in order to understand how these standards work—divide issues into two categories: those properly raised and preserved at trial; and those not properly raised and preserved (that is, waived or forfeited). First, assume that the trial defense counsel properly preserved the objection. The client will not get relief on appeal unless there is: (1) error; and (2) material prejudice to a substantial right.⁷⁰ The appellate court applies the appropriate standard of review to answer the first question of this two-part analysis: “Is there error?” If the court concludes that there is error, then it engages in a separate analysis—commonly known as harmless error or Article 59(a) analysis—to answer the second question: “Is there prejudice?” If (and only if) the answer to both questions is “yes,” the accused get relief—that is, when the appellate court finds *prejudicial error*. If there is error but no prejudice, there is “harmless error,” and the accused gets nothing.

There are several main standards of review appellate courts apply to answer the first question of the appellate inquiry (“Is there error?”) where the defense counsel objected. These are *abuse of discretion*, *clearly erroneous*, and *de novo*.

The most common standard of review—and that applied to the nearly all evidentiary rulings—is *abuse of discretion*. “To reverse for an abuse of discretion involves far more than a difference in . . . opinion. . . . The challenged action must . . . be found to be ‘arbitrary, fanciful, clearly unreasonable,’ or ‘clearly erroneous,’ in order to be invalidated on appeal.”⁷¹

Another major standard of review, also exceedingly deferential to the trial judge, is *clearly erroneous*, which appellate courts use to determine whether a trial judge’s findings of fact are incorrect.⁷² A frequently quoted definition of this standard

of review is this colorful description: “At least one court has defined the clearly-erroneous standard by stating that it must be ‘more than just maybe or probably wrong; it must . . . strike us as wrong with the force of a five-week-old, unrefrigerated dead fish.’”⁷³

The least deferential standard of review is applied to questions of law—*de novo*.⁷⁴ Here, the appellate court gives *no deference* to the trial judge’s ruling. Even where the appellate court is reviewing an issue *de novo*, however, it normally defers to any findings of fact by the military judge unless they are clearly erroneous.⁷⁵

Some issues lend themselves to a *mixed* standard of review because such issues present mixed questions of law and fact. For example, appellate courts review motions to suppress for abuse of discretion,⁷⁶ deferring to trial judges’ findings of fact unless they are clearly erroneous, and review trial judges’ legal conclusions *de novo*. An appellate court will not find an abuse of discretion unless the findings of fact are clearly erroneous or the conclusions of law are incorrect.⁷⁷

Finally, there are some standards of review that do not fit any of the common categories. For example, the discretion granted a military judge’s decision on a challenge for cause depends on whether the basis of the challenge was actual or implied bias. A ruling on a challenge for cause based on actual bias is reviewed for an abuse of discretion. “By contrast, issues of implied bias are reviewed under a standard less deferential than abuse of discretion but more deferential than *de novo*.”⁷⁸

The CAAF and the Army Court of Criminal Appeals (ACCA) both recognize the importance of standards of review to appellate decision makers. Accordingly, both require a state-

70. See, e.g., UCMJ art. 59(a) (2000); MCM, *supra* note 2, MIL. R. EVID 103(a).

71. United States v. Travers, 25 M.J. 61, 62 (C.M.A. 1987) (quoting United States v. Yoakum, 8 M.J. 763 (A.C.M.R. 1980)).

72. See, e.g., United States v. Alameda, 57 M.J. 190, 198 (2002). If the military judge fails to make findings of fact, an appellate court will accord his ruling much less (or no) deference. *Id.* Appellate courts also give military judges less deference on evidence rulings if they fail to articulate the MRE 403 balancing analysis (that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice) on the record, and no deference whatsoever if the military judge fails to conduct the balancing test at all. United States v. Manns, 54 M.J. 164, 166 (2000); see generally MCM, *supra* note 2, MIL. R. EVID. 403.

73. United States v. French, 38 M.J. 420, 425 (C.M.A. 1993) (citing Parts & Elec. Motors, Inc. v. Sterling Elec., Inc., 866 F.2d 228, 233 (7th Cir. 1988)).

74. See United States v. Smith, 56 M.J. 290, 292 (2002). For example, appellate courts apply the *de novo* standard of review to questions of whether a service member is entitled to pretrial confinement credit, and whether he has suffered cruel and unusual punishment in violation of Article 55, UCMJ, or the Eighth Amendment. See *id.* Appellate courts also apply the *de novo* standard to questions of ineffective assistance of counsel, United States v. Grigoruk, 56 M.J. 304, 306 (2002), and whether a confession is voluntary, United States v. Benner, 57 M.J. 210, 212 (2002).

75. See United States v. Melanson, 53 M.J. 1 (2000) (resolving a question of jurisdiction, a classic *de novo* issue, primarily by deferring to trial judge’s findings of fact).

76. See United States v. Ayala, 43 M.J. 296, 298 (1995); see also United States v. Hollis, 57 M.J. 74, 79 (2002).

77. Ayala, 43 M.J. at 298. A mixed standard of review also applies to issues of whether a service member suffers unlawful pretrial punishment in violation of Article 13, UCMJ. The “court will not overturn a military judge’s findings of fact, including a finding of no intent to punish, unless they are clearly erroneous. . . . We will review *de novo* the ultimate question of whether an appellant is entitled to credit for a violation of Article 13.” United States v. Mosby, 56 M.J. 309, 310 (2002). See also United States v. Corteguera, 56 M.J. 330, 334 n.1 (2002).

78. United States v. Downing, 56 M.J. 419, 422 (2002).

ment of the applicable standard of review for every issue presented by an appellant.⁷⁹ This brief description of some of the basic standards of review demonstrates that it is not enough for an appellate court to simply disagree with a trial judge's ruling. It is not the province of the appellate court to substitute its judgment for the trial judge. In the vast majority of cases, the appellate courts refuse to do so. As one appellate court succinctly stated, "We take this occasion to repeat: we do not sit to hear cases *de novo*."⁸⁰

Harmless Error, Plain Error, and Article 59(a)

It is important to remember that all of the standards of review discussed above apply only when counsel have properly preserved those issues for appeal by objecting at the appropriate point in the trial process. If the appellate court applies the appropriate standard of review and finds error, it next analyzes whether the error is prejudicial or harmless. This is where the trial attorney's hard work to properly preserve appellate issues may pay off for the client. If the appellate court finds error, *the burden shifts to the government to prove that the error is harmless*.⁸¹ This burden depends on the type of error—non-constitutional or constitutional. For a non-constitutional error, the government must prove that any error is harmless. In doing so, the government must address "whether the error itself had sub-

stantial influence"⁸² on the findings. "If so, or if one is left in grave doubt, the conviction cannot stand."⁸³ For a constitutional error, the government must prove that the error is harmless beyond a reasonable doubt.⁸⁴ "Stated differently, the test is, 'Is it clear beyond a reasonable doubt that a rational jury would have found the appellant guilty absent the error.'"⁸⁵

There is a certain category of errors that the appellate courts do not test for harm. Known as "structural errors,"⁸⁶ these errors are so basic that harm is self-evident. "[W]e recognize that in some cases the precise legal characterization of an error may be important. In this regard, the Supreme Court has observed that some errors are 'structural defects' in the constitution of the trial mechanism, which defy analysis by 'harmless error' standards."⁸⁷

Structural errors include⁸⁸ the "total deprivation of the right to counsel at trial,"⁸⁹ the lack of an impartial judge,⁹⁰ the "unlawful exclusion of members of the defendant's race from a grand jury,"⁹¹ the "right to self-representation at trial,"⁹² and the "right to public trial."⁹³ "Without [certain] basic protections, a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as fundamentally fair."⁹⁴

79. U.S. COURT OF APPEALS FOR THE ARMED FORCES, RULES OF PRACTICE AND PROCEDURE, RULE 24 (1 Nov. 2001); ARMY COURT OF CRIMINAL APPEALS, INTERNAL RULES OF PRACTICE AND PROCEDURE app. 1 (1 April 2002). Sometimes, the question of the appropriate standard of review is itself the subject of litigation. *Gen. Elec. Co. v. Joiner*, 522 U.S. 136 (1997) (considering appeal in which the sole issue was what standard of review applied to the trial court's decision to admit or exclude expert testimony); *United States v. Butcher*, 56 M.J. 87, 90-91 (2001) (discussing the standard of review for recusal of a military judge).

80. *Commercial Standards Ins. Co. v. Bryce Street Apartments, Ltd.*, 703 F.2d 904, 908 (5th Cir. 1983), *quoted in* CHILDRESS & DAVIS, *supra* note 68, § 1.02, at 1-9.

81. *See, e.g.*, *United States v. Pablo*, 53 M.J. 356, 359 (2000). The CAAF reviews a court of criminal appeals' determination of harmlessness *de novo*. *United States v. Hall*, 56 M.J. 432, 436 (2002) (citing *United States v. Grijalva*, 55 M.J. 223, 228 (2001) (applying *de novo* standard of review for constitutional error)); *United States v. Gunkle*, 55 M.J. 26, 30 (2001) (applying *de novo* standard of review for non-constitutional error).

82. *Pablo*, 53 M.J. at 359 (quoting *Kotteakos v. United States*, 328 U.S. 750 (1946)). *See also* *United States v. Moolick*, 53 M.J. 174, 177 (2000); *United States v. Armstrong*, 53 M.J. 76, 81 (2000); *United States v. Pollard*, 38 M.J. 41, 52 (C.M.A. 1993).

83. *Pablo*, 53 M.J. at 359; *Armstrong*, 53 M.J. at 81 (citing *Kotteakos*, 328 U.S. at 750).

84. *Chapman v. California*, 386 U.S. 18, 23 (1976); *United States v. Ward*, 1 M.J. 176 (C.M.A. 1975) (applying *Chapman* to military cases); *see also* *United States v. George*, 52 M.J. 259, 261 (2000) (citing *United States v. Bins*, 43 M.J. 79, 86 (1995)).

85. *United States v. McDonald*, 57 M.J. 18, 20 (2002) (quoting *Neder v. United States*, 527 U.S. 1, 18 (1999)).

86. *See, e.g.*, *United States v. Reynolds*, 49 M.J. 260, 262 (1998).

87. *Id.* (quoting *Arizona v. Fulminante*, 499 U.S. 279, 309 (1991)).

88. *See Reynolds*, 49 M.J. at 261 (listing examples of structural errors).

89. *Id.* (citing *Gideon v. Wainwright*, 372 U.S. 335 (1963)).

90. *Id.* (citing *Tumey v. Ohio*, 273 U.S. 510 (1927)).

91. *Id.* (citing *Vasquez v. Hillery*, 474 U.S. 254 (1986)).

92. *Id.* (citing *McKaskle v. Wiggins*, 465 U.S. 168 (1984)).

93. *Id.* (citing *Waller v. Georgia*, 467 U.S. 39 (1984)).

For issues that trial defense counsel have *not* properly preserved, appellate courts may only grant relief for errors that rise to the level of “plain error.” Accordingly, to determine whether relief is warranted for waived or forfeited issues, the appellate courts engage in a completely different analysis than for properly preserved issues. Plain error analysis gives an accused an extremely low chance of success. Before granting any relief, the court must find: (1) error; (2) that is “plain,” “clear,” or “obvious;” and (3) that the error materially prejudiced one of the accused’s substantial rights.⁹⁵

Put another way, an error is “plain” if it is “so egregious and obvious” that a trial judge and prosecutor would be “derelict” in permitting it in a trial held today. . . . Although the error may not have been “plain” at the time of the court-martial proceeding, it is sufficient if the error becomes “plain” at the time of appellate consideration.⁹⁶

Unlike harmless error analysis, plain error analysis places the *burden on the appellant* to prove all three prongs of the test.⁹⁷ The accused receives no relief unless his allegation of error meets all three prongs, in which case the appellate court may only grant relief if the error “seriously affects the fairness, integrity, or public perception of judicial proceedings.”⁹⁸

In order to prove “material prejudice to a substantial right” in a plain error scenario, the appellant must prove that the error “was so significant as to influence the outcome of the trial, that is, [the error] made the trial unfair,”⁹⁹ or that the error had an “unfair prejudicial impact on the jury’s deliberations.”¹⁰⁰

The plain-error doctrine . . . tempers the blow of a rigid application of the contemporaneous-objection requirement. The Rule authorizes the Courts of Appeals to correct only “particularly egregious errors,” . . . those errors that “seriously affect the fairness, integrity or public reputation of judicial proceedings.” In other words, the plain-error exception is to be “used sparingly, solely in those cases in which a miscarriage of justice would otherwise result.” Any unwarranted extension of this exacting definition of plain error would skew the Rule’s “careful balancing of our need to encourage all trial participants to seek a fair and accurate trial the first time around against our insistence that obvious injustice be promptly redressed.”¹⁰¹

The CAAF announced the three-part test for plain error in the military in the landmark case of *United States v. Powell*.¹⁰² In so doing, the CAAF distinguished military practice from practice in other federal courts where appellants need only establish plain, obvious error that “affects substantial rights.”¹⁰³ The arguably more stringent military standard results from the mandate of Article 59(a), UCMJ, which states that “[a] finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.”¹⁰⁴ Article 59(a) applies to virtually every non-structural error in military practice, whether preserved or not. How, then, does one square this single universal requirement with all the different formulations, requirements, and burdens for harmless error (constitutional and non-

94. *United States v. Reynolds*, 49 M.J. 260, 261 (1998) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991)). There is also a concept known as “invited error,” “invited response”, or “invited reply.” This doctrine essentially states that the defense cannot create error and then take advantage of a situation of its own making. *See generally* *United States v. Gilley*, 56 M.J. 113 (2002) (citing *United States v. Eggen*, 51 M.J. 259 (1999); *United States v. Raya*, 45 M.J. 151 (1996)).

95. *United States v. Powell*, 49 M.J. 460, 465 (1998). *See* MCM, *supra* note 2, MIL. R. EVID. 103(d); UCMJ art. 59(a) (2000).

96. *United States v. Baker*, 57 M.J. 330, 337 (2002) (Crawford, C.J., dissenting) (citations omitted).

97. *See, e.g.*, *United States v. Schlamer*, 52 M.J. 80, 85-86 (1999), *cert. denied*, 529 U.S. 1005 (2000). In *Powell*, 49 M.J. at 460, the CAAF described a confusing “shifting burden” for plain error, which it never applied and appears to have abandoned. *See id.*; *cf.* *United States v. Gilley*, 56 M.J. 113, 129 (2002) (Sullivan, C.J., concurring in part and dissenting in part); *see also* *United States v. Ruiz*, 54 M.J. 138, 139 (2000); *United States v. Kho*, 54 M.J. 63, 65 (2000); *United States v. Southwick*, 53 M.J. 412, 414 (2000); *United States v. Reist*, 50 M.J. 108, 110 (1999). The appellant alone clearly bears the burden of proving all three components of plain error, and the burden never shifts to the government. *See* *United States v. Olano*, 507 U.S. 725, 734, 741 (1993).

98. *United States v. Johnson*, 520 U.S. 461, 466-67 (1999). The CAAF has never clearly addressed this fourth prong of the plain error analysis. Some plain and obvious error still may not cause material prejudice to a substantial right. *See, e.g.*, *Southwick*, 53 M.J. at 412. For this reason, trial practitioners should read opinions closely—an affirmance of a conviction does not necessarily signal approval of the military judge’s rulings.

99. *See* *United States v. Boyd*, 52 M.J. 758, 762 (A.F. Ct. Crim. App. 2000) (citing *Powell*, 49 M.J. at 465; *United States v. Fisher*, 21 M.J. 327, 328 (C.M.A. 1986)).

100. *Schlamer*, 52 M.J. at 85.

101. *United States v. Young*, 470 U.S. 1, 15-16 (1985) (quoting *United States v. Frady*, 456 U.S. 152, 163 (1982); *United States v. Atkinson*, 297 U.S. 157, 160 (1936)).

102. 49 M.J. 460 (1998).

103. *United States v. Olano*, 507 U.S. 725, 734 (1993).

104. UCMJ art. 59(a) (2000).

constitutional) and plain error? In this author's view, the different formulations define what "material prejudice to a substantial right" is in those different contexts.

This brief introduction to waiver and standards of review sets the stage for some general observations that apply to trial practice. These observations will assist trial attorneys who now realize the crucial importance of "making the appellate record."

II. Top Ten General Observations on Making the Appellate Record

1. Failure to Object (or to Object Properly) at Trial Waives the Issue

This basic observation bears repeating. Proper objections at trial are the bedrock of appellate relief. Without a proper objection, the accused's chances for relief on appeal are meager. The lesson for trial advocates is self-evident: *object*, and *object properly*!

2. An Error Without Prejudice Means No Relief on Appeal

Even where the trial defense counsel objects properly at trial, the appellate courts will not grant relief unless there is both an error and resulting harm to the accused.¹⁰⁵ Trial practitioners must articulate how specific rulings prejudice the accused when they make their objections. For example, if the judge refuses to allow a defense counsel to ask a victim certain questions on cross-examination, the counsel must tell the judge why those questions and answers fit into the defense theory of the case. Do they impeach credibility? If they do, is the victim's credibility central to the defense theory of defense?

3. An Objection at Trial on One Basis Does Not Preserve an Objection on a Different Basis

As already noted, MRE 103(a) requires counsel to state a "specific ground of objection."¹⁰⁶ Similarly, RCM 905(a)

requires that every "motion shall state the grounds upon which it is made."¹⁰⁷ Military Rule of Evidence 304, which deals with confessions and admissions, allows the military judge to require the defense to specify the grounds upon which the defense is moving to suppress or object to evidence.¹⁰⁸ Military courts take this requirement seriously. There are numerous examples of courts finding waiver where appellate defense counsel raise different bases of objection from those that defense counsel lodged at trial.¹⁰⁹ In *United States v. Schlamer*,¹¹⁰ for example, the following exchange took place at trial after the defense objected to a trial counsel's questions of a Criminal Investigative Command agent, concerning a potentially false confession:

Q: During this interrogation of [the accused], did it appear to you that he was making—

CC [Civilian Defense Counsel]: Objection, Your Honor. Speculation, ultimate issue.

MJ: Overruled.

...

Q: Did it appear to you that he was making this information up?

A: No, sir, it did not.

...

Q: [B]ased on the way the interview was conducted and how he appeared, do you think this is a false confession?

A: Absolutely not, sir.¹¹¹

The defense appellate counsel later argued that this clearly troubling exchange violated the rule against "human lie detector testimony."¹¹² The CAAF found this basis waived, stating that the "speculation" objection was not sufficient to preserve

105. See *id.*; MCM, *supra* note 2, MIL. R. EVID. 103; *United States v. Powell* (discussing the requirement to show prejudice in "plain error" cases).

106. MCM, *supra* note 2, MIL. R. EVID. 103(a)(1).

107. *Id.* R.C.M. 905(a).

108. *Id.* MIL. R. EVID. 304(d)(3).

109. See, e.g., *United States v. Norris*, 55 M.J. 209, 213 (2001) (holding that an objection to a proffered expert's qualifications does not preserve an appellate objection to the adequacy of the foundation for the expert opinion); *United States v. Munoz*, 32 M.J. 359, 364-65 (C.M.A. 1991), *cert. denied*, 502 U.S. 967 (1991) (holding that an objection to the admissibility of evidence offered as a "plan" under MRE 404(b) "suggests waiver" of an appellate objection under MRE 403); *United States v. Arab*, 55 M.J. 508, 512 (Army Ct. Crim. App. 2001) (holding that counsel waived a speedy trial issue on appeal after making a related motion at trial; lack of objection to the specific time period for purposes of calculating the number of days to bring appellant to trial constituted waiver of an assertion on appeal that the same time period counted against the government).

110. 52 M.J. 80 (1999).

111. *Id.* at 85.

112. *Id.*

the “human lie detector” basis, first raised on appeal.¹¹³ The court reviewed the issue for plain error and found none.¹¹⁴

Similarly, but without basing its decision on waiver, the CAAF denied relief in a case where the basis for the objection at trial was hearsay, and the basis argued on appeal was a violation of the spousal privilege.¹¹⁵ The court echoed one of the bases for the waiver rules, reiterating that appellate review of an objection “requires a record that the appellate court can review.”¹¹⁶ “It is difficult, if not impossible,” the court stated, “to second-guess the intent of the trial defense counsel if he or she does not make the specific objection known to the military judge.”¹¹⁷ The obvious lesson for trial practitioners is that they must alert the judge to all possible bases for their objections.¹¹⁸

4. *Offering Evidence on One Basis at Trial Does Not Preserve an Offer of the Same Evidence on a Different Basis on Appeal*

This is a corollary to the previous observation. The military courts have adopted this general rule, which also applies in other federal courts. One court describes this general rule as follows:

If evidence is excluded at trial because it is inadmissible for the purpose articulated by its proponent, the proponent cannot challenge the ruling on appeal on the ground that the evidence could have been admitted for another purpose. A purpose not identified at

trial does not provide a basis for reversal on appeal.¹¹⁹

As with its corollary observation, the CAAF also takes this principle seriously. An excellent example of its application is *United States v. Palmer*,¹²⁰ in which the defense counsel offered certain evidence as an exception to the hearsay rule, and the military judge sustained the trial counsel’s objection to the evidence. The appellate defense counsel later argued that the military judge should have admitted the evidence as a prior inconsistent statement under MRE 613.¹²¹ Without specifically finding that the trial defense counsel waived this argument, the CAAF found that the trial defense counsel’s “vague and misdirected proffer” meant that the military judge did not abuse his discretion.¹²² In its decision, the CAAF provides two-part guidance for trial practitioners. First, the court reminded counsel that

[w]hen a ruling excludes evidence, appellate review of the correctness of the ruling is not preserved unless the substance of the evidence was made known to the military judge by offer or was apparent from the context within which questions were asked. Military judges are not expected to be clairvoyant. When the basis for admissibility is not obvious, an offer of proof is required to clearly and specifically identify the evidence sought to be admitted and its significance.¹²³

Although proffers by attorneys are not evidence,¹²⁴ MRE 103(a)(2) requires them.¹²⁵ In some instances, trial defense

113. *Id.* See also *United States v. Rodriguez-Lopez*, No. 33548, 2001 CCA LEXIS 223, *36-37 (A.F. Ct. Crim. App. July 26, 2001) (unpublished). In *Rodriguez-Lopez*, the trial defense counsel objected that expert testimony vouching for the credibility of child sex abuse victims “invad[ed] the province of the trier of fact.” *Id.* at *36. The ACCA held that this objection failed to preserve an appellate objection that the expert’s testimony was the equivalent of a “human lie detector.” *Id.* at *30. The appellate court stated that “[t]here was nothing before the military judge at the time to suggest the expert witness’ testimony would improperly vouch for the credibility of the witnesses.” *Id.* at *36-37. “Without ‘divine inspiration,’ the military judge would have had no way of knowing that the defense counsel’s objection extended to that basis.” *Id.* at *37.

114. *Schlamer*, 52 M.J. at 86.

115. *United States v. McCarty*, 45 M.J. 334 (1996).

116. *Id.* at 335 n.2.

117. *Id.*

118. Counsel should be wary of making their objections too broad; a “vague reference” to a basis for objection at trial may not be enough to preserve an issue for appeal. *United States v. Gray*, 51 M.J. 1, 26 (1999) (holding that in a capital case, a motion to suppress statements to civilian investigators that made only a “vague reference to Article 31” waived Article 31 objection on appeal; the defense counsel made “no attempt to develop a proper factual basis for suppression” on this ground at trial); *United States v. Harris*, 52 M.J. 665, 669 (Army Ct. Crim. App. 2000) (holding that a trial defense counsel waived appellate allegation of error for failure to grant new Article 32 investigation; the trial defense counsel never “clearly put” the issue to the convening authority or the military judge).

119. *United States v. Palmer*, 55 M.J. 205, 208 (2001) (citing *United States v. Hudson*, 970 F.2d 948, 957 (1st Cir. 1992)).

120. *Id.*

121. *Id.* at 207.

122. *Id.* at 208 (citation omitted).

123. *Id.* (quoting *United States v. Means*, 24 M.J. 160, 162-63 (C.M.A. 1987)). See MCM, *supra* note 2, MIL. R. EVID 103(a)(2).

counsel may want to suggest to the military judge that he actually hear the disputed evidence before ruling on its admissibility. Alternatively, the defense counsel should make sure that the proffer is complete by ensuring that it fully sets forth what the witness will say, why it is relevant, how the evidence fits the defense theory of defense (and thus is necessary to the defense), how the evidence counters government evidence or a government contention, and how the evidence comes within a defense theory of admissibility. If the military judge refuses to allow a proffer, the defense counsel can cite the requirement of MRE 103(a)(2) to the judge. If that does not work, the defense counsel should consider drafting a written proffer and attaching it as an appellate exhibit.

The second point of guidance the CAAF made in *Palmer* is that, while counsel do not have to cite specific rules of evidence by number or quote specific words from the rules,¹²⁶

counsel [are] required to alert the military judge to the significance of the proffered evidence. In this case, defense counsel did not allude to the inconsistency between [the witness's] pretrial statement and his trial testimony as the basis for admission. Instead, he focused the military judge on the hearsay exception based on [the witness's] state of mind. *If defense counsel had two theories of admissibility, it was incumbent upon him to alert the military judge to both theories, especially when it became apparent that the military judge was ruling only on the [state of mind] basis.*¹²⁷

The lessons from this quotation are self-evident. First, counsel seeking to admit evidence should offer it under every appli-

cable theory of admissibility. They should also urge the military judge to apply the same principle to the trial counsel. If the government offers evidence on one basis, the defense counsel should object if the military judge admits it on a different basis. If the military judge erroneously admits evidence under one theory, however, an appellate court could find that the error did not prejudice the accused if the evidence was properly admissible under another theory.¹²⁸

5. *An Unconditional Guilty Plea Waives Most Motions, Even If Counsel Fully Litigate Them Before the Plea*

This observation answers the hypothetical question posed at the beginning of this article. An unconditional guilty plea “which results in a finding of guilty waives any objection, whether or not previously raised, insofar as the objection relates to the factual issue of guilt of the offense(s) to which the plea was made.”¹²⁹ There are only two ways to preserve issues that would be waived by a guilty plea: to plead not guilty; or to enter into a conditional plea, which requires the consent of the government and the approval of the military judge. If an appellate court finds that the military judge’s ruling on the preserved issue was erroneous, the accused may then withdraw his plea.¹³⁰

6. *Failure to Raise Most Motions Before Plea Waives Them, Absent Good Cause*

Those issues affected by this general principle are primarily listed in RCM 905(b), and include motions relating to discovery and production of witnesses.¹³¹ Also included are most motions based on the Fourth and Fifth Amendments and Article 31, UCMJ. Appellate courts review a military judge’s determination of good cause for abuse of discretion.¹³²

124. See *United States v. Grant*, 38 M.J. 684, 690 n.3 (A.F.C.M.R. 1993), *aff’d*, 42 M.J. 340 (1995) (“We again caution trial participants that averments of counsel are not evidence.”).

125. MCM, *supra* note 2, MIL. R. EVID. 103(a)(2).

126. *Palmer*, 55 M.J. at 208.

127. *Id.* (emphasis added).

128. *United States v. Cobia*, 53 M.J. 305 (2000) (holding that the defense counsel waived any objection to admission of evidence of a prior conviction under MRE 609; in any event, the conviction was also admissible as substantive evidence; thus, the admission of the evidence was not prejudicial); *United States v. Robles*, 53 M.J. 783, 798-99 (A.F. Ct. Crim. App. 2000) (holding that the military judge’s error in admitting testimony as residual hearsay was not prejudicial where the evidence would have been admissible on a different basis).

129. MCM, *supra* note 2, R.C.M. 910(j). See generally *King*, *supra* note 22; MCM, *supra* note 2, R.C.M. 705(c) (discussing prohibited terms and conditions of pretrial agreements). It is not clear if an unconditional guilty plea waives a motion to dismiss for violation of Article 10, UCMJ’s statutory right to a speedy trial. *United States v. Birge*, 52 M.J. 209 (1999) (deciding on other grounds and failing to reach this issue, despite the fact that appellate counsel presented it); see also *United States v. Gutierrez*, 57 M.J. 148, 149 (2002) (deciding the case on other grounds). But see *United States v. Benavides*, 57 M.J. 550, 554 (A.F. Ct. Crim. App. 2002). For a general discussion in favor of disallowing waiver of this right by a guilty plea, see *King*, *supra* note 22, at 178-80.

130. MCM, *supra* note 2, R.C.M. 910(a)(2).

131. *Id.* R.C.M. 905(b)(4).

132. See *id.* MIL. R. EVID. 304(d)(2)(A); 311(d)(2)(A).

7. *If the Military Judge Defers Ruling or Invites Further Evidence or Reconsideration, He Has Not Ruled, and There Is No Ruling to Appeal*

“Where a military judge makes a preliminary ruling excluding evidence but invites counsel to renew the request at a later time in the trial, counsel’s failure to renew the request waives the issue.”¹³³ This principle is discussed in greater detail in the section relating to the proper preservation of motions in limine.

8. *Whether the Trial Is Before a Panel or Military Judge Alone Matters, Especially for the Purposes of Plain Error Analysis*

Numerous presumptions appellate courts apply to military judges tilt the balance against appellate relief when the accused was tried by military judge alone, particularly when defense counsel fail to object properly.

When the issue of plain error involves a judge-alone trial, an appellant faces a particularly high hurdle. A military judge is presumed to know the law and apply it correctly, is presumed capable of filtering out inadmissible evidence, and is presumed not to have relied on such evidence on the question of guilt or innocence. As a result, “plain error before a military judge sitting alone is rare indeed.”¹³⁴

The appellate courts also presume that the “prejudicial impact of erroneously admitted evidence” on a military judge is less than on a panel.¹³⁵ All of these presumptions make it especially

imperative for the trial practitioner to object properly in judge-alone trials. Erroneous rulings based on proper objections may also chip away at the appellate judges’ presumption that the military judge knows the law and applied it correctly.

9. *With Few Exceptions, the Record of Trial Cannot Be Supplemented on Appeal*

Appellate review is generally limited to matters presented at trial.¹³⁶ Probably the most common exception to this principle is allegations of ineffectiveness of counsel.¹³⁷ If the appellate courts see a need for further inquiry into a specific area not covered in the record of trial, they usually remand the case for a fact-finding hearing, where the military judge will hear additional evidence and enter findings of fact and conclusions of law.¹³⁸ The principle of disallowing record supplementation on appeal leads to probably the most important general observation concerning making the appellate record:

10. *If It’s Not in the Record, It Didn’t Happen!*

The “record” means the “record of trial,” which includes only those matters received into evidence and appellate exhibits.¹³⁹ It does *not* mean everything “between the ‘blue covers,’” such as the summarized transcript of the Article 32, UCMJ hearing, other allied papers, or rejected exhibits “marked for and referred to on the record but not received into evidence.”¹⁴⁰ Other examples include electronic correspondence between counsel and with the military judge, and out-of-court sessions under RCM 802 that are not properly reflected on the record. These items are not “on the record,” are not part of the “record for trial,” and cannot be considered on appeal.¹⁴¹

133. *United States v. Browning*, 54 M.J. 1, 9 (2000) (citing *United States v. Rockwood*, 52 M.J. 98, 105, *cert. denied*, 528 U.S. 1160 (2000)); *United States v. Dollente*, 45 M.J. 234, 240 (1996); *see also United States v. Brannan*, 18 M.J. 181, 183, 185 (C.M.A. 1984) (holding that the military judge initially erred when he denied a defense motion in limine, but that the error was harmless because he “stated he would consider objections individually at the time the witnesses testified,” and because the defense counsel failed to further object “in view of [MRE] 103”).

134. *United States v. Robbins*, 52 M.J. 455, 457 (2000), *cert. denied*, 531 U.S. 874 (2000) (citation omitted).

135. *United States v. Cacy*, 43 M.J. 214, 218 (1995) (quoting *United States v. Cardenas*, 9 F.3d 1139, 1156 (5th Cir. 1993)).

136. *United States v. Mason*, 45 M.J. 483, 484 (1997) (holding that the CAAF’s review under Article 67, UCMJ is limited to the facts, testimony, and evidence presented at trial); *United States v. Rust*, 41 M.J. 472, 479 n.3 (1995), *cert. denied*, 516 U.S. 86 (1995) (holding that appellate courts must review rulings of a military judge based on evidence in the record of trial); *United States v. Vangelisti*, 30 M.J. 234, 237 (C.M.A. 1990) (noting that the pertinent inquiry is the legal sufficiency of the evidence of record supporting the judge’s findings, not the existence of evidence—or of potential evidence—supporting a contrary holding). Courts of Criminal Appeals, however, do have fact-finding power under UCMJ art. 66, so those courts do allow some supplementation of the record. Supplementation is not normally allowed on evidentiary issues or issues of guilt or innocence. *See, e.g., United States v. Hopkins*, 2 M.J. 1031, 1034 n.2 (A.C.M.R. 1976), *modified on other grounds*, 4 M.J. 260 (C.M.A. 1978) (rejecting the appellant’s attempt to supplement the record on a speedy trial motion because the “appellant was not prevented from presenting the evidence at trial, and . . . his belated attempt to present the evidence to this Court is an inappropriate attempt to add to the trial record that which could have been presented at trial”).

137. *See generally United States v. Ginn*, 47 M.J. 236 (1997).

138. *United States v. Dubay*, 37 C.M.R. 411 (C.M.A. 1967).

139. *United States v. Leal*, 44 M.J. 235, 236 (1996).

140. *Id.* (quoting *United States v. Heirs*, 29 M.J. 68, 69 (C.M.A. 1989)).

III. Preserving Selected Specific Objections

Mere objections do not preserve all issues for appeal; the preservation of some issues requires counsel to comply with specific requirements. This section describes the requirements for some common objections in the chronological order of their usual occurrence in the court-martial process.

1. Preserving Objections to or During the Article 32 Investigation

Preserving objections to matters involving the Article 32 investigation involves some fairly complicated steps. First, counsel must object on the record during the investigation and ask the investigating officer to specifically note the objection in the report of investigation.¹⁴¹ Next, counsel must again object—in writing—to the convening authority within five days of receiving the investigating officer's report.¹⁴² Failure to do either of these things constitutes waiver.¹⁴³ If the objection is for failure to produce a witness, the defense counsel must also ask the convening authority to order a deposition of the witness.¹⁴⁴ Finally, the defense counsel must object yet again—to the military judge—before entering a plea, or waive the issue.¹⁴⁵

2. Preserving Objections to Discovery and Witness Matters

Counsel should make specific requests for discovery, tailored to the facts of each case, rather than simply relying on standard discovery requests. Case law recognizes a distinction between general and specific requests for information.¹⁴⁷ If the government denies a request for certain discovery or for a particular witness, the defense counsel should move to compel the government to produce the item or witness sought before entering a plea.¹⁴⁸ If the motion is to compel a witness, the defense counsel should proffer the substance of the witness's testimony and explain how that testimony is both legally and logically relevant.¹⁴⁹ The defense counsel should first *interview the witness* or describe—on the record—any unsuccessful attempts to interview the witness. Failure to do so could cause the military judge to summarily deny a request to produce the witness.

Failure to interview the requested witness was one of the reasons the appellate court held against the appellant in *United States v. Rockwood*.¹⁵⁰ The defense counsel's proffer and RCM 703 request were both inadequate to support production of the requested witness, the Commanding General of the Joint Task Force located in Haiti.¹⁵¹ The defense made a proffer to the military judge, but did not interview the witness first. Not surprisingly, the military judge denied the request, although he invited the defense to renew it.¹⁵²

On appeal, the CAAF first reiterated that the UCMJ grants all parties "equal opportunity to obtain witnesses . . . in accor-

141. *See id.* (citing *Heirs*, 29 M.J. at 69).

142. MCM, *supra* note 2, R.C.M. 405(h)(2).

143. *Id.* R.C.M. 405(j)(4); *United States v. Czekala*, 38 M.J. 566, 571-72 (A.C.M.R. 1993), *aff'd*, 42 M.J. 168 (1995) (holding that failure to submit objections to the convening authority within five days of the Article 32 report of investigation, based, *inter alia*, on inadequate time to prepare, waived any objection to the conduct of the hearing); *see also* *United States v. Harris*, 52 M.J. 665, 669 (Army Ct. Crim. App. 2000).

144. MCM, *supra* note 2, R.C.M. 405(k) (stating that the convening authority, investigating officer, or military judge may grant relief from waiver for good cause).

145. *United States v. Chuculate*, 5 M.J. 143 (C.M.A. 1978).

146. MCM, *supra* note 2, R.C.M. 905(b)(1).

147. *See, e.g.*, *United States v. Stone*, 40 M.J. 421, 423 (C.M.A. 1994). In *Stone*, the Court of Military Appeals stated as follows:

[W]here prosecutorial misconduct is present or where the Government fails to disclose information pursuant to a *specific* request, the evidence will be considered "material unless failure to disclose" can be demonstrated to "be harmless beyond a reasonable doubt." Where there is no request or only a *general* request, the failure will be "material only if there is a reasonable probability that" a different verdict would result from disclosure of the evidence.

Id. (quoting *United States v. Hart*, 29 M.J. 407, 410 (1990)). *See also* *United States v. Morris*, 52 M.J. 193, 197 (1999) (repeating the standard applicable to general requests); *United States v. Eshalomi*, 23 M.J. 12, 22 (C.M.A. 1986).

148. MCM, *supra* note 2, R.C.M. 905(b)(4).

149. *See id.* R.C.M. 703(c)(2)(B).

150. 52 M.J. 98 (1999).

151. *Id.* at 103.

152. *Id.* at 104.

dance with such regulations as the President may prescribe.”¹⁵³ “The President, in turn, has provided that ‘each party is entitled to the production of any witness whose testimony on a matter in issue . . . would be relevant and necessary.’”¹⁵⁴ The CAAF, however, found that

[w]hatever marginal relevance [the Commanding General’s testimony] might have had, we cannot fault the military judge for lacking clairvoyance *in limine*. Moreover, the requirement of RCM 703(c)(2)(B)(i) for a synopsis of expected testimony is not satisfied by merely listing subjects to be addressed; rather, it must set out what the witness is expected to say about those subjects.¹⁵⁵

The final nail in the coffin for the defense counsel’s request resulted from his failure to renew the request after the military judge invited him to do so. Thus, the defense counsel had waived the issue.¹⁵⁶

3. Preserving Motions in Limine

Preserving motions in limine is perhaps the greatest area of confusion for counsel, especially for inexperienced defense attorneys. To preserve a motion in limine, there must be both a “ruling” and proper preservation of the issue *after* the ruling. First, there must be a “ruling.” The military judge may defer ruling, make a tentative or preliminary ruling subject to further evidence, or invite defense counsel to reopen consideration of a

preliminary ruling. If the military judge does any of these, he has not ruled. In any of these circumstances, there is no ruling to appeal. In *United States v. Dollente*,¹⁵⁷ the CAAF adopted a three-part test to determine when a motion in limine is sufficient to preserve an issue for appellate review absent further objection. First, the matter must “be adequately presented”¹⁵⁸ to the trial court; second, the issue must be “of the type that can be finally decided in a pretrial hearing,” that is, “akin to [a] question [] of law;”¹⁵⁹ third, the lower “court’s ruling must be definitive.”¹⁶⁰

Even if the military judge makes a ruling, the defense counsel must still properly preserve the issue *after* the ruling. Here, the Supreme Court’s doctrine in *United States v. Luce*¹⁶¹ comes into play. The issue in *Luce* was the proper method to preserve a motion in limine under Federal Rule of Evidence (FRE) 609. The defense motion sought to prohibit government cross-examination of the defendant concerning a prior conviction.¹⁶² The Court held that to properly preserve the judge’s denial of the motion, the defendant must testify;¹⁶³ of course, he must also be cross-examined about the prior conviction. *Luce* is also the law in military courts-martial.¹⁶⁴

More recently, the Supreme Court extended *Luce* even further. In *Ohler v. United States*,¹⁶⁵ which the military adopted almost immediately in *United States v. Cobia*,¹⁶⁶ the Supreme Court created yet another requirement to preserve a motion in limine to prohibit cross-examination based on a prior conviction. After *Ohler* and *Cobia*, the accused must not only testify to preserve the motion, but his testimony must not “remove the sting” of the conviction on direct examination.¹⁶⁷ In other words, the government’s cross-examination must be the first

153. *Id.* (citing UCMJ art. 46 (2000)).

154. *Id.* (citing MCM, *supra* note 2, R.C.M. 703(b)(1), MIL. R. EVID. 401).

155. *Rockwood*, 52 M.J. at 105.

156. *Id.*

157. 45 M.J. 234 (1996).

158. *Id.* at 240 (quoting *United States v. Mejia-Alarcon*, 995 F.2d 982, 986-87 (10th Cir. 1993)).

159. *Id.*

160. *Id.* See also *United States v. Cardreon*, 52 M.J. 213 (1999).

161. 469 U.S. 38 (1984).

162. See *id.* at 39.

163. *Id.* at 43.

164. *United States v. Sutton*, 31 M.J. 11 (C.M.A. 1990).

165. 529 U.S. 753 (2000).

166. 53 M.J. 305 (2000).

167. *Id.* at 309-10.

time the members hear about the accused's prior conviction. The rationale for this requirement, which basic trial advocacy courses may argue is simply poor trial practice, is that if the accused "preemptively introduces evidence of a prior conviction on direct examination [he] may not on appeal claim that the admission of such evidence was error."¹⁶⁸

The *Luce* rule is not limited to motions in limine involving prior convictions under FRE or MRE 609. It also applies to other rulings in limine concerning impeachment, such as motions under MRE 608(b) to prohibit cross-examination of good military character witnesses with questions about specific instances of misconduct. In *United States v. Gee*,¹⁶⁹ the military extended the *Luce* rationale to these motions.¹⁷⁰ After the military judge makes a definitive ruling denying the defense motion, the defense must call witnesses to testify to the accused's good character under MRE 405(a), and the government must attempt to impeach them with the specific instances that were the subject of the defense motion. Failure to call the witnesses—or failure by the government to attempt to impeach them on this basis—waives the issue for appeal.¹⁷¹

The rationale for this line of cases is three-fold. First, "the reviewing court is handicapped in considering the trial court's ruling on the motion *in limine* because the record does not contain the testimony of the witness who would have been impeached."¹⁷² Second, "the impact of the judge's ruling is speculative because it has no factual context."¹⁷³ "[T]he judge's ruling could change as the case unfolds."¹⁷⁴ Third, without a fully developed record, "the reviewing court cannot determine whether the ruling on the motion *in limine* motivated the decision of a defendant not to testify or not to call certain witnesses," decisions that normally result from the "consideration

of numerous factors."¹⁷⁵ As such, any harm resulting from the ruling is speculative.¹⁷⁶

It remains to be seen whether the courts will extend the additional requirements of *Ohler* to motions in limine other than to exclude a prior conviction, as *Gee* extended *Luce* to motions involving impeachment evidence in addition to impeachment by prior conviction under MRE 609. There does not appear to be any rationale to limit the additional requirements solely to that scenario.

In motions in limine involving evidence other than impeachment evidence, even where the military judge makes a definitive ruling on an issue, subsequent events may require the defense counsel to make further objections or waive appellate review. In *United States v. Johnson*,¹⁷⁷ the defense counsel's failure to object when the trial counsel's questions exceeded those permitted by the military judge's ruling in limine constituted waiver.¹⁷⁸

One recent development relaxes the defense burden in this area. Until recently, it was common practice in federal court to require an additional objection even after a definitive ruling denying a defense motion in limine. This practice required the defense counsel to make the objection before admission of the evidence during trial. A recent amendment to FRE 103(a)(2), effective 1 December 2000 (and to the corresponding MRE 103(a)(2), effective 1 June 2002) eliminated this requirement.¹⁷⁹ That change reads: "Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal."¹⁸⁰

168. *Id.* at 310 (citing *Ohler v. United States*, 529 U.S. 753, 760 (2000)).

169. 39 M.J. 311 (C.M.A. 1994).

170. *Id.* at 313-14.

171. The CAAF has applied the *Luce* and *Gee* rationale to other instances. In *United States v. Nelson*, 51 M.J. 399 (1999), the CAAF applied the rationale to a scenario where the appellant claimed that he withdrew his guilty plea in response to a ruling by the military judge. The CAAF held that the issue was not preserved because the accused plead not guilty. *Id.* at 400.

172. *Gee*, 39 M.J. at 313.

173. *Id.*

174. *Id.* (citation omitted).

175. *Id.*

176. *Id.*

177. 35 M.J. 17 (C.M.A. 1992).

178. *Id.* at 21.

179. MCM, *supra* note 2, MIL. R. EVID. 1102.

180. FED. R. EVID. 102(a)(2); MCM, *supra* note 2, MIL. R. EVID. 103(a)(2). This change does not affect the line of cases under *Luce* and *Ohler*. See *id.*

4. Preserving Challenges for Cause and Peremptory Challenges

Preserving defense challenges of panel members and preserving objections to government challenges of members also requires defense counsel to take certain specific steps, depending on the nature of the challenge. Again, failure to take these mandatory steps waives the issues for appeal. Rule for Courts-Martial 912 contains the basic rules controlling challenges. Rule 912(f)(4) covers waiver of challenges for cause; Rule 912(g)(2) covers waiver of peremptory challenges. Certain bases for challenge are not waivable. Challenges against members who are accusers, witnesses, or investigating officers, or other persons who had a role in the disposition of the charges, are not Waivable.¹⁸¹ Most defense counsel are familiar with these prohibitions. A challenge based on the membership of enlisted members in the same unit as the accused is waivable, however, “if the party knew or could have discovered by the exercise of due diligence the ground for challenge and failed to raise it in a timely manner.”¹⁸²

Preserving a challenge for cause requires counsel to state a “but for” objection on the record:

[W]hen a challenge for cause is denied, a peremptory challenge by the challenging party against any member shall preserve the issue for later review, provided that when the member who was unsuccessfully challenged for cause is peremptorily challenged by the same party, that party must state that it would have exercised its peremptory challenge against another member if the challenge for cause had been granted.¹⁸³

The source of the “but for” rule is *United States v. Harris*.¹⁸⁴ Subsequent case law explains the rule and “make[s] four things

clear.”¹⁸⁵ First, “if the accused does not exercise his peremptory challenge *at all*, he waives his objection to denial of his challenge of a member for cause.”¹⁸⁶ Second, if the accused “peremptorily challenges the member whom he has unsuccessfully attempted to challenge for cause and does not state on the record that he would have used his peremptory challenge on some other member, he waives his objection.”¹⁸⁷ Third, an accused “does not waive his objection to the military judge’s denial of a challenge for cause if he peremptorily challenges another member.”¹⁸⁸ Finally, an accused “does not waive his objection if he peremptorily challenges the member he has unsuccessfully challenged for cause and he states on the record that he would have peremptorily challenged another member if his challenge for cause had been granted.”¹⁸⁹

The CAAF explained the rationale for the “but for” rule in *United States v. Eby*,¹⁹⁰ and strictly enforced the precise requirements of the rule. In *Eby*, the military judge denied a defense challenge for cause against a member. The defense then followed up that denial with a peremptory challenge as follows:

Ma’am, bear with counsel for a second. I would have to refresh my recollection on the rule. The defense is going to peremptorily challenge [the officer] and I would just like to note that we’re doing so because our challenge for cause was denied in this case; just to protect our record.¹⁹¹

The CAAF held that this insufficient statement did not preserve the issue for appeal.¹⁹²

The CAAF provided three reasons for the “but for” rule and its strict interpretation of that rule. First, “[a]bsent specifying the intent to exercise a different peremptory challenge, we are left to assume that counsel was satisfied with the remaining members on the court-martial panel.”¹⁹³ Second, “[i]f defense

181. MCM, *supra* note 2, R.C.M. 912(f)(1). These non-waivable grounds are listed in RCM 912(f)(1). *Id.*

182. *Id.* R.C.M. 912(f)(4).

183. *Id.*

184. 13 M.J. 288 (C.M.A. 1982); *see also* *United States v. Jobson*, 31 M.J. 117 (C.M.A. 1990).

185. *Jobson*, 31 M.J. at 120.

186. *Id.* (emphasis in original).

187. *Id.*

188. *Id.*

189. *Id.*

190. 44 M.J. 425 (1996).

191. *Id.* at 426.

192. *Id.* at 427.

would have challenged another member had the challenge for cause been granted, counsel should so state so an appellate court can consider whether any error prejudiced appellant's substantial rights."¹⁹⁴ Where no intent is specified, there can be no prejudice. Third, where defense counsel do not "state that they would peremptorily challenge another member if the challenge for cause was granted, they have not shown they were deprived of anything. They must state that they intended to exercise a right before they can complain of being deprived of it."¹⁹⁵

Preserving a defense objection to a government peremptory challenge also has its hurdles, particularly when the basis for the challenge involves *Batson v. Kentucky*¹⁹⁶ and its progeny, as applied to the military. Typically, when the government peremptorily challenges a minority or female member, the defense counsel requests a "*Batson*" rationale. This requires the trial counsel to state a race or gender-neutral rationale for the peremptory challenge. In the military, the race or gender-neutral rationale may not be one that is "unreasonable, implausible, or that otherwise makes no sense."¹⁹⁷

Whatever rationale the trial counsel provides for a challenge, failure by the defense to contest that rationale waives appellate consideration of the peremptory challenge absent plain error.¹⁹⁸ Counsel must speak up. For example, if the trial counsel's purported rationale for a peremptory challenge is that a member appeared to be inattentive during the voir dire process, the defense counsel must dispute those facts to preserve

appellate review of an objection to the government's challenge. The military judge should then enter findings of fact on the matter before making a ruling. If, however, the military judge does not give the defense counsel an opportunity to disagree, the courts will not apply waiver.¹⁹⁹

In articulating the basis for a challenge for cause, the CAAF gives defense attorneys a few allowances for imperfection. Generally, challenges for cause are classified in two groups, actual bias and implied bias. Actual bias is reviewed through the eyes of the military judge and court members. "The test for actual bias is whether any bias is such that it will not yield to the evidence presented and the judge's instructions."²⁰⁰ Implied bias, on the other hand is "reviewed under an objective standard, viewed through the eyes of the public."²⁰¹ The focus is on the perception or appearance of fairness of the military justice system.²⁰²

The CAAF ruled in *United States v. Armstrong*²⁰³ that a challenge for cause "encompasses both actual and implied bias."²⁰⁴ "Actual and implied bias are separate tests, not separate grounds for challenge."²⁰⁵ In other words, a defense counsel does not have to specify whether a challenge is based on actual bias or implied bias. *Armstrong* is contrary to the CAAF's earlier opinion in *United States v. Ai*,²⁰⁶ where the court refused to consider a challenge for cause based on implied bias raised for the first time on appeal.²⁰⁷

193. *Id.*

194. *Id.*

195. *Id.*

196. *Batson v. Kentucky*, 476 U.S. 79 (1986) (prohibiting peremptory challenges based on race); *United States v. Moore*, 28 M.J. 366, 368 (C.M.A. 1989) (applying *Batson* to the military); *see also* *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994) (prohibiting peremptory challenges based on gender).

197. *United States v. Tulloch*, 47 M.J. 283, 287 (1997) (declining to follow *Purkett v. Elem*, 514 U.S. 765 (1995)).

198. *United States v. Gray*, 51 M.J. 1, 35 (1999); *see also* *United States v. Brocks*, 55 M.J. 614, 618-19 (A.F. Ct. Crim. App. 2001); *United States v. Watson*, 54 M.J. 779, 782 (A.F. Ct. Crim. App. 2001); *United States v. Walker*, 50 M.J. 749, 750 (N-M. Ct. Crim. App. 1999); *United States v. Galarza*, No. 980075, at 3 (Army Ct. Crim App. 31 May 2000) (unpublished).

199. *United States v. Hurn*, 55 M.J. 446, 449 (2001) (holding that playing the "numbers game" is not a valid reason for a peremptory challenge, because such a goal could be accomplished by challenging any member).

200. *United States v. Weisen*, 56 M.J. 172, 174 (2001) (quoting *United States v. Napoleon*, 46 M.J. 279, 283 (1997)).

201. *Id.*

202. *Id.*

203. 54 M.J. 51 (2000).

204. *Id.* at 53.

205. *Id.*

206. 49 M.J. 1 (1998).

207. *Id.* at 4-5.

One way to reconcile these two opinions is to conclude that military appellate courts will consider a challenge for cause to encompass both actual and implied bias, but will not allow counsel to raise a separate rationale for the first time on appeal, regardless of whether it encompasses actual or implied bias, or both. Defense counsel should consider specifying that challenges encompass both actual and implied bias.

5. Preserving Evidentiary Objections During Trial

To effectively preserve evidentiary objections during trial, counsel should scrupulously adhere to the mandates of MRE 103, already discussed in depth.²⁰⁸ Counsel should also consider arguing some appellate principles. Using arguments that employ principles the appellate courts will apply can help make the appellate record at the trial level. For evidentiary questions, that means employing a four-part test that the CAAF uses to evaluate prejudice from an erroneous evidentiary ruling; in other words, to determine if the error is “prejudicial” or “harmless.” The CAAF originally announced the test in 1985 in *United States v. Weeks*,²⁰⁹ and reiterated it recently in *United States v. Gunkle*.²¹⁰ The court considers: “(1) the strength of the prosecution’s case; (2) the strength of the defense case; (3) the materiality of the evidence at issue; and (4) the quality of the evidence at issue.”²¹¹

To effectively employ these points, the trial defense counsel should incorporate them into his argument for why the military judge should admit the proffered evidence. Addressing these points at trial provides a road map for appellate counsel to argue prejudice on appeal, and for the appellate courts to find prejudice from an erroneous evidentiary ruling. When the credibility

of witnesses is key, the defense should also be entitled to use all the “weapons in its arsenal” to attack it.²¹² Trial defense counsel should use this argument as ammunition to persuade the military judge to admit defense evidence. As one military judge recently stated, “Five of the most beautiful words in the English language, to the trial advocate, are ‘Goes to credibility, Your Honor.’”²¹³

6. Preserving Issues Concerning Instructions

There are two main concerns for trial defense counsel regarding instructions. First, the military judge may insist on giving an instruction to which the defense objects. Second, the military judge may refuse to give an instruction upon which the defense insists. While a military judge has substantial discretion when it comes to instructions, this discretion has limits. For example, the military judge must *sua sponte* instruct on any lesser included offenses “reasonably raised” by the evidence.²¹⁴ Similarly, “when an affirmative defense is raised by the evidence, an instruction is required.”²¹⁵ Waiver is normally not an issue in these instances.²¹⁶ Counsel must object, however, to any instructions the military judge proposes to give in order to avoid waiver of those issues.²¹⁷ “It is a rare case in which an improper instruction will justify reversal of a criminal conviction when no objection has been made in the trial court.”²¹⁸ This is especially true if the defense counsel agrees with the military judge that the instruction is correct.²¹⁹

An appellate lens is also helpful for defense-proposed instructions, to help counsel craft effective arguments for the trial level. The test appellate courts use to determine if denial of a requested instruction is error is whether: (1) the instruction

208. See *supra* notes 52-58.

209. 20 M.J. 22 (1985).

210. 55 M.J. 26 (2001).

211. *Id.* at 30.

212. See *United States v. Waller*, 29 C.M.R. 111, 122 (C.M.A. 1960) (Ferguson, C.J., concurring in part and dissenting in part).

213. LTC (P) Stephen Henley, Military Judge, U.S. Army, Address at Ft. Hood Trial Defense Service Officer Professional Development Day (May 18, 2001).

214. See, e.g., *United States v. McDonald*, 57 M.J. 18, 20 (2002); MCM, *supra* note 2, R.C.M. 920(e). Counsel can “affirmatively waive an instruction on lesser-included offenses to present an ‘all or nothing’ defense, but only in those rare cases of an ‘affirmative, calculated, and designed course of action’ by a defense counsel.” *United States v. Smith*, 50 M.J. 451, 457-58 (1999) (Gierke, J., dissenting) (quoting *United States v. Moore*, 31 C.M.R. 282, 286 (C.M.A. 1962)).

215. *McDonald*, 57 M.J. at 20.

216. *Id.*

217. MCM, *supra* note 2, R.C.M. 920(f); *Smith*, 50 M.J. at 455. The CAAF continues to state that waiver must be established “by affirmative action of the accused’s counsel, and not by a mere failure to object to erroneous instructions or to request proper instructions.” *Id.* “No magic words are required to establish a waiver.” *Id.* “[T]he language of [RCM 920(f)] itself does not anticipate an explicit statement by a trial attorney, but merely the lack of objection.” *Id.*

218. *Henderson v. Kibbe*, 431 U.S. 145, 154 (1977).

219. *United States v. Valdez*, 35 M.J. 555, 561-62 (A.C.M.R. 1992); see also *Smith*, 50 M.J. at 456; *United States v. Smith*, 34 M.J. 200, 203 (C.M.A. 1992) (holding that counsel waived objections to instructions where his “opinions and proposals concerning special instructions were solicited”).

is correct;²²⁰ (2) the instruction was “not substantially covered in the main charge;”²²¹ and (3) the instruction “is on such a vital point in the case that the failure to give it deprived defendant of a defense or seriously impaired its effective presentation.”²²² Trial defense counsel should incorporate this test into arguments to military judges for giving specific instructions. This argument lays the groundwork for appeal, and will demonstrate how the accused is prejudiced if the military judge still refuses to give the requested instruction.

7. Preserving Objections to Sentencing Evidence

The same general principles that apply to preserving objections to evidence in the merits portion of the trial apply to preserving objections to sentencing evidence. Defense counsel should remember that the trial counsel can only admit testimony and other forms of evidence that fit into one or more of the subparts of RCM 1001(b)(1)-(5). Defense objections to evidence trial counsel seek to admit should stress that the evidence does not fit any of those categories.

Defense counsel can also argue that the proposed evidence fails the balancing test of MRE 403—that its probative value is substantially outweighed by the danger of unfair prejudice. For evidence the defense seeks to admit, counsel should remember that the court may relax the rules of evidence for the defense on sentencing.²²³ The accused also has a “virtually unrestricted” right to present any matters desired in an unsworn statement.²²⁴

Those matters, however, are not “evidence” in the strict sense of the word.²²⁵

8. Preserving Objections to Post-Trial Matters

Waiver is alive and well in post-trial matters, and can arise at several points in the post-trial process. First, failure to object to matters in the Staff Judge Advocate’s Post-Trial Recommendation constitutes waiver in the absence of plain error.²²⁶ The plain error analysis applied to this type of post-trial error differs, however, from the traditional formulation. In post-trial errors, the accused must still comply with the three-part test of *Powell*; he must show plain and obvious error and material prejudice to a substantial right.²²⁷ Material prejudice to substantial rights, however, occurs in post-trial matters where an appellant “makes some colorable showing of prejudice.”²²⁸ To accomplish this, “[f]irst, an appellant must allege the error at the Court of Criminal Appeals.”²²⁹ “Second, an appellant must allege prejudice as a result of the error.”²³⁰ “Third, an appellant must show what he would do to resolve the error if given such an opportunity.”²³¹ “If the appellant makes such a showing, the Court of Criminal Appeals must either provide meaningful relief or return the case to the Judge Advocate General concerned for a remand to a convening authority for a new post-trial recommendation and action.”²³²

Failure to raise appellate issues in RCM 1105 and RCM 1106 clemency requests generally does not waive issues such as alleged legal errors at trial. The CAAF has stated, however,

220. *United States v. Damatta-Olivera*, 37 M.J. 474, 478 (C.M.A. 1993), *cert. denied*, 512 M.J. 1244 (1994).

221. *Id.*

222. *Id.*

223. *See, e.g., United States v. Roth*, 52 M.J. 187, 190 (1999) (“This rule . . . is not limited to documentary evidence. . . . [I]t is clear that the intent of the sentencing rules is to favor the admission of relevant evidence in the sentencing proceeding, regardless of the form of the evidence.”) (citing MCM, *supra* note 2, R.C.M. 1001(c)(3)).

224. *United States v. Jeffery*, 49 M.J. 229, 230 (1998); *United States v. Grill*, 48 M.J. 131, 132 (1998).

225. *United States v. Manns*, 54 M.J. 164, 167 (2000) (Cox, J., concurring in the result).

226. MCM, *supra* note 2, R.C.M. 1106(f)(6); *see United States v. Wheelus*, 49 M.J. 283, 286 (1998) (noting that despite amendments to the Rules for Courts-Martial that greatly simplified the post-trial process in 1984, “post-trial processing problems abound”). The CAAF reiterated its concern with the “lack of attention to post-trial processing” again last term. *United States v. Williams*, 57 M.J. 1, 4 n.5 (2002).

227. *United States v. Powell*, 49 M.J. 460, 465 (1998). Prejudice is not required to merit relief for dilatory post-trial processing under the doctrine of *United States v. Collazo*, 53 M.J. 721 (Army Ct. Crim. App. 2001). The service courts’ power to grant relief in this area flows from their mandate under Article 66(c), UCMJ, to “affirm only such findings of guilty and the sentence or such part and amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved.” UCMJ art. 66(c) (2000). This determination is commonly referred to as “sentence appropriateness.” *See United States v. Tardif*, 57 M.J. 219, 220 (2002); *United States v. Bauerbach*, 55 M.J. 501 (Army Ct. Crim App. 2001).

228. *Wheelus*, 49 M.J. at 289 (citing *United States v. Chatman*, 46 M.J. 321, 323-34 (1997)). *See also Williams*, 57 M.J. at 2-3.

229. *Wheelus*, 49 M.J. at 289.

230. *Id.*

231. *Id.* at 288.

232. *Id.* at 289.

that the failure to mention an issue in post-trial submissions “underscore[s] the lack of prejudice.”²³³ The rationale for this is that if the error was prejudicial to an accused, it would merit at least a mention in the post-trial submission.²³⁴

Finally, an accused must take certain steps to raise issues under the provisions of Article 55, UCMJ, concerning cruel and unusual punishment while serving post-trial confinement. Specifically, post-trial prisoners must exhaust administrative remedies before raising such matters in court. Counsel should do this by raising these issues in post-trial submissions, filing complaints through the prisoner grievance system, and requesting redress and complaint under the provisions of Article 138, UCMJ.²³⁵ As with complaints of illegal pretrial punishment under Article 13, UCMJ, failure to complain while undergoing

the alleged cruel and unusual conditions may be evidence of the lack of rigor of the post-trial conditions.²³⁶

IV. Conclusion

Defense attorneys at the trial level should possess a basic understanding of the principles of appellate practice to vigorously defend their clients. That understanding must include a thorough knowledge of the requirements to preserve objections and other issues at trial. Some of those requirements are somewhat complex, particularly in the area of motions in limine. Trial defense attorneys who master these principles will effectively “make the appellate record” for their clients, furthering the chance of relief for those clients on appeal. Those who fail to master these basic principles will almost certainly foreclose any chance of relief for their clients.

233. *United States v. Holt*, 52 M.J. 173, 185 (1999), *cert. denied*, 529 U.S. 1100 (2000).

234. *Id.*

235. *See United States v. Erby*, 54 M.J. 476, 478 (2001); *United States v. White*, 54 M.J. 469, 472 (2001); *see also United States v. Towns*, 52 M.J. 830, 834 (A.F. Ct. Crim. App. 2000), *aff'd*, 55 M.J. 361 (2001) (holding that counsel satisfied the requirement for exhaustion of administrative remedies by raising the issue to the convening authority in post-trial submissions).

236. *See United States v. Huffman*, 40 M.J. 225, 227 (C.M.A. 1994) (holding that failure to complain of alleged illegal pretrial punishment in violation of Article 13, UCMJ while it is still ongoing is “strong evidence” that there is no violation).

TJAGSA Practice Note

Faculty, The Judge Advocate General's School, U.S. Army

Administrative and Civil Law Note

New Army Regulation on Fatal Training and Operational Accident Collateral Investigations and Family Presentations

The Army has published new guidance on fatal training and operational accident collateral investigations, and presentations to next of kin. *Army Regulation (AR) 600-34*, effective 2 February 2003,¹ implements a congressional requirement to ensure that commands make fatality reports of service members who die in the line of duty available to family members.² Judge advocates must be familiar with this new regulation as it contains specific guidelines for conducting collateral investigations into these accidents and requires SJAs to support their commands in presenting accident investigation reports to family members.

First, the regulation provides guidance on conducting collateral investigations of fatal training and operational accidents. The regulation defines a "training related death" as "an accidental loss of life associated with a noncombat military exercise or training activity that is designed to develop a soldier's physical ability, or to maintain and increase a soldier's collective combat and peacekeeping skills."³ An "operational related death" is one "[a]ssociated with [an] active duty military exercise or activity occurring in a designated war zone or toward designated missions related to current war operations or military operations other than war, contributing directly or indirectly to the death of the soldier."⁴

Commanders must conduct these investigations under *AR 15-6*,⁵ *AR 385-40*,⁶ and the new regulation, *AR 600-34*. The

most significant new requirements for conducting these investigations are the timelines for completing investigations and the interim reporting requirements when investigations are not completed within the required time period. The regulation requires the investigating officer to submit the report of investigation to the appointing authority⁷ within thirty days from the date of the accident. In response to a written request showing good cause, the appointing authority may grant the investigating officer delays, but only in ten-day increments.⁸ If the appointing authority grants an extension, he is responsible for the release of status information from the investigation, first to the primary next of kin (PNOK)⁹ and then to the public, if necessary.¹⁰ The regulation requires the legal office to review each update and the final presentation to ensure that they do not contain any admission of liability, waiver of a defense, offer of compensation, or statement that might jeopardize the Army's litigation posture.¹¹

Once the collateral investigation is complete, the new regulation requires the appointing authority to offer a family presentation based on the report of investigation to adult PNOK on all fatal training and operation accidents, as well as suspected cases of friendly fire and special interest cases of probable high public interest, as determined by The Adjutant General.¹² The PNOK must receive the report of investigation first, followed by members of Congress and local civic officials whose constituents were casualties, and finally, the media.¹³

The appointing authority must coordinate the appointment of a briefer, who is most often the deceased soldier's colonel or brigade-level commander.¹⁴ At a minimum, the briefing team consists of a briefer, the family's casualty affairs officer, and a chaplain from the unit in which the mishap occurred. The team

1. U.S. DEP'T OF ARMY, REG. 600-34, FATAL TRAINING/OPERATIONAL ACCIDENT PRESENTATIONS TO THE NEXT OF KIN (2 Jan. 2003) [hereinafter AR 600-34].

2. See The National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102-484, div. A, tit. X, subtit. H, § 1072, 106 Stat. 2508 (reprinted at 10 U.S.C. § 113 (2000)) [hereinafter NDAA for FY 1993]. The Army first implemented this requirement in Message, 011252Z Mar 01, Dep't of Army Chief of Staff, subject: Providing Results of Fatal Training Accident Investigations to Soldier's Next of Kin (NOK).

3. AR 600-34, *supra* note 1, at glossary.

4. *Id.*

5. U.S. DEP'T OF ARMY, REG. 15-6, PROCEDURE FOR INVESTIGATING OFFICERS AND BOARDS OF OFFICERS (30 Sept. 1996) [hereinafter AR 15-6].

6. U.S. DEP'T OF ARMY, REG. 385-40, ACCIDENT REPORTING AND RECORDS (1 Dec. 1994) [hereinafter AR 385-40].

7. Usually the General Court-Martial Convening Authority (GCMCA). See AR 600-34, *supra* note 1, para. 3-2; see also AR 15-6, *supra* note 5, para. 2-1a(3) (providing that only a GCMCA may appoint an investigation into incidents resulting in death).

8. AR 600-34, *supra* note 1, para. 3-6. The thirty-day requirement to complete the investigation is based on the congressional requirement to notify the soldier's family members of certain facts within thirty days of the date of notification of the soldier's death. The specific notification requirements include: notice that the accident is under investigation; the names of the agencies within the Department of the Army conducting the investigation; and notice of the existence of any reports of such agencies that have been or will be issued. The Army must also furnish the family members with a copy of the investigation. See NDAA for FY 93 § 1072(a)(2).

may also include a legal advisor or public affairs officer if a family has invited, or may invite, a family legal representative or local media members to attend the presentation.¹⁵

The new policy requires the briefer to present facts to the family in three areas. First, the briefer must provide an explanation of the unit's mission, focusing on the soldier's significant contributions to the unit, its mission, and the Army. The briefer must then give an accurate account of the facts and circumstances surrounding the accident, focusing on releasable portions of the collateral investigation report.¹⁶ Finally, the briefer must explain any corrective action that the Army has taken.¹⁷

The SJA or legal advisor performs several reviews before the presentation. The SJA or legal advisor redacts the collateral investigation report as necessary to comply with the Privacy Act and Freedom of Information Act¹⁸ and prepares copies for the family members. The SJA must also prepare a letter to the family explaining the reasons for the redaction.¹⁹ The SJA or legal advisor also conducts a legal review of all materials that the briefer intends to use during the rehearsals and the actual presentation, including bullet briefing charts, notes, and executive summaries.²⁰ If family members ask questions during the presentation that are appropriately answered by a legal advisor, the briefer must forward the questions to the legal advisor, who may follow up directly with the PNOK.²¹

9. See U.S. DEP'T OF DEFENSE, INSTR. 1300.18, MILITARY PERSONNEL CASUALTY MATTERS, POLICIES, AND PROCEDURES para. E2.1.1.25 (18 Dec. 2000). This instruction defines "primary next of kin" as:

[t]he person must [be] closely related to the casualty The unremarried surviving spouse is primary NOK. The term surviving spouse does not include one who obtained a divorce from the decedent (at any time). Other NOK and interested parties are recognized in the following order:

E2.1.1.25.1. Natural and adopted children in order of seniority. The age of majority is 18 years. The rights of minor children, with the exception of disposition of remains, shall be exercised by their surviving parent or legal guardian (Minor children are not entitled to make disposition of remains).

E2.1.1.25.2. Parents in order of seniority, unless legal exclusive (sole) custody was granted to a person by reason of a court decree or statutory provision.

E2.1.1.25.3. The remarried surviving spouse. The term remarried surviving spouse does not include one who obtained a divorce from the decedent (at any time) or who remarried before a finding of death

E2.1.1.25.4. Blood or adoptive relative who was granted legal custody of the person by a court decree or statutory provision.

E2.1.1.25.5. Brothers or sisters of legal age in order of seniority.

E2.1.1.25.6. Grandparents in order of seniority.

E2.1.1.25.7. Other relatives of legal age in order of relationship to the individual according to civil laws. Seniority controls when persons are of equal degree of relationship.

E2.1.1.25.8. Person standing in loco parentis to the decedent. Seniority in age will control when the persons are equal [in] relationship.

Id. For PNOKs under the age of eighteen, the adult custodian determines the PNOK's ability to receive a face-to-face presentation. See AR 600-34, *supra* note 1, para. 4-1.

10. See AR 600-34, *supra* note 1, para. 4-2e (requiring that the approval authority provide status information in the form of updates in accordance with AR 600-8-1, *ch.* 7). This regulation provides that the installation/community casualty working group coordinates staff actions associated with casualty reporting, to include maintaining communication with the family for follow-up action, and ensuring that the casualty affairs officer monitors the progress of the investigation for updated information. U.S. DEP'T OF ARMY, REG. 600-8-1, ARMY CASUALTY OPERATIONS/ASSISTANCE/INSURANCE (20 Oct. 1994).

11. AR 600-34, *supra* note 1, para. 4-2e.

12. *Id.* para. 4-1.

13. *Id.* para. 6-2.

14. *Id.* para. 2-1f.

15. *Id.* para. 2-3.

16. *Id.* para. 3-6a. The regulation is not intended to provide the PNOK with information not otherwise releasable under the Freedom of Information Act, 5 U.S.C. § 552 (2000), and the Privacy Act, 5 U.S.C. § 552a. AR 600-34, *supra* note 1, para. 3-6a.

17. AR 600-34, *supra* note 1, para. 2-4c.

18. See *supra* note 16.

19. AR 600-34, *supra* note 1, paras. 3-6g, 4-3h(5).

20. *Id.* paras. 4-3h(6), 5-2c.

21. *Id.* para. 5-4d.

All judge advocates and Department of the Army civilian attorneys providing advice to commanders and investigating officers must be familiar with the more specific requirements for conducting collateral investigations into fatal training and operational accidents. Among other things, it will enable them to assist the command in meeting the required timelines. More-

over, SJA offices must understand their role in family presentations and generally assist the command in carrying out the very important mission of providing a deceased soldier's family with needed information in a professional and caring manner. Lieutenant Colonel Stahl.

USALSA Report

United States Army Legal Services Agency

Litigation Division Notes

Trial Counsel's Pre-Referral Subpoena Puts Bank at Risk

The U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) recently considered whether a bank's compliance with a trial counsel's Article 32 subpoena violated the Right to Financial Privacy Act (RFPA).¹ In *Flowers v. First Hawaiian Bank*,² the Ninth Circuit ruled that the trial counsel could not lawfully issue a subpoena for the Article 32 proceedings. Thus, when the bank complied with the subpoena without complying with the RFPA notice provisions, it violated the RFPA and may have subjected itself to liability.

The Right to Financial Privacy Act

The RFPA³ was enacted in 1978 in response to *United States v. Miller*.⁴ In *Miller*, the Supreme Court held that a customer did not have a protected Fourth Amendment privacy interest in his bank records, and therefore could not challenge the validity of a government subpoena of those records.⁵ The RFPA prescribes five means by which the federal government may seek customer records from financial institutions: (1) customer consent; (2) administrative subpoenas; (3) judicial subpoenas; (4) search warrants; and (5) "formal written request[s]" by government agencies.⁶ The RFPA prescribes standards and procedures that the government must follow with respect to each of these mechanisms, including advance notice and an opportunity to seek judicial relief from administrative and judicial sub-

poenas and written requests.⁷ As a general matter, no "government authority"⁸ may obtain a customer's financial records without following the standards and procedures prescribed by the RFPA.⁹

Financial institutions are prohibited from disclosing customer financial records "except in accordance with the provisions" of the RFPA, and a financial institution may not release such records until the government "certifies in writing to the financial institution that it has complied with the applicable provisions" of the RFPA.¹⁰ Once the government has provided the written certification, good-faith reliance on it immunizes the financial institution from liability under the RFPA and state law.¹¹

These general requirements are subject to a number of statutory exceptions, most of which are contained in 12 U.S.C. § 3413. The exception that applies to *Flowers* is section 3413(e), the "comparable rules" exception, which provides, "Nothing in this chapter shall apply when financial records are sought by a Government authority under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts in connection with litigation to which the Government authority and the customer are parties."¹²

*Facts*¹³

This case arose while one of the plaintiffs, Sergeant Major Marshall Flowers, was stationed at the Schofield Barracks in

1. 12 U.S.C. §§ 3401-3422 (2000).

2. 293 F.3d 966 (9th Cir. 2002).

3. See generally Captain Donald W. Hitzeman, *Due Diligence in Obtaining Financial Records*, ARMY LAW., July 1990, at 39; Major James Key, *Litigation Division Note: Right to Financial Privacy Act*, ARMY LAW., Sept. 1998, at 52.

4. 425 U.S. 435 (1976).

5. *Id.* at 445.

6. 12 U.S.C. §§ 3402, 3404-3408 (2000).

7. See, e.g., *id.* § 3405(1)-(3) (governing the procedural requirements for administrative subpoena); *id.* § 3410 (authorizing judicial challenges to government requests for access to financial records).

8. 12 U.S.C. § 3401(3). The RFPA defines "government authority" to mean "any agency or department of the United States, or any officer, employee, or agent thereof." *Id.*

9. *Id.* §§ 3402, 3403(a).

10. *Id.* § 3403(a)-(b).

11. *Id.* § 3417(c).

12. *Id.* § 3413(e).

Hawaii.¹⁴ Sergeant Major Flowers was charged with larceny¹⁵ under the Uniform Code of Military Justice (UCMJ) in April 1998.¹⁶ In preparation for the Article 32 investigation, the trial counsel requested the Flowers' bank records from the First Hawaiian Bank's Schofield Branch. The trial counsel issued the request on a form entitled "SUBPOENA,"¹⁷ requesting all bank records for an account held jointly by Sergeant Major and Mrs. Flowers. The request explained that the records were needed for presentation at an Article 32 proceeding. The bank subsequently informed Sergeant Major Flowers, by letter, that the Army had requested his bank records and enclosed a copy of the request. After notifying Sergeant Major Flowers of the request, the bank provided the Flowers' financial records in accordance with the Army's request. The Army later dismissed the charges against Sergeant Major Flowers.¹⁸

In May 1999, the Flowers filed a pro se complaint against the bank in the U.S. District Court for the District of Hawaii (District Court).¹⁹ The Flowers alleged that the bank violated the RFPA's requirement that a financial institution only produce the financial records after receiving a certificate of RFPA compliance from the governmental authority requesting the records.²⁰ The bank moved for judgment on the pleadings. The bank argued that its release of the Flowers' financial records without a certificate of compliance did not violate the RFPA because the trial counsel's subpoena was for an Article 32 hearing, which the bank argued was under a rule comparable to that of the Federal Rules of Civil Procedure or Criminal Procedure. The District court agreed with the bank and held that section 3413(e) applied because the UCMJ applies principles of law and rules of evidence comparable to the federal rules, and

because the Article 32 proceeding was a form of litigation between the government and the bank's customer, Mr. Flowers. The court thus granted the bank's motion for judgment on the pleadings.²¹

The Flowers Appeal to the Ninth Circuit

The Flowers appealed to the Court of Appeals for the Ninth Circuit,²² arguing that the bank violated the RFPA by providing copies of their financial records to the Army without a certificate of compliance.²³ They also challenged the bank's assertion that the production of their financial records pursuant to the trial counsel's subpoena was exempt from the RFPA.²⁴

In its amicus brief to the Ninth Circuit, the Army conceded that neither the UCMJ, the Rules for Courts-Martial (RCM), nor any other provision of law authorized the Army to compel the bank to produce account records for an Article 32 investigation.²⁵ The Army did, however, argue that the subpoena was exempt from the RFPA under the "comparable rules" exception of the RFPA, arguing that the UCMJ and the RCM are comparable to the Federal Rules of Criminal Procedure.²⁶

The Ninth Circuit found that the comparable rules exception did not apply because the Army only met three of the four requirements of the comparable rules exception when it sought the Flowers' financial records for the Article 32 hearing.²⁷ The court found that the trial counsel was acting for a government authority within the meaning of the RFPA.²⁸ The court also relied on several military cases²⁹ to find that Article 32 proceed-

13. The facts of the case are from *Flowers v. First Hawaiian Bank*, 295 F.3d 966 (9th Cir. 2002) [hereinafter *Flowers I*] and *Flowers v. First Hawaiian Bank*, 85 F. Supp. 2d 993 (D. Haw. 2000) [hereinafter *Flowers II*].

14. *Flowers I*, 85 F. Supp. 2d at 994.

15. UCMJ art. 121 (2000).

16. *Flowers II*, 295 F.3d at 969.

17. *Id.* at 970; see U.S. Dep't of Defense, DD Form 453, Subpoena (August 1984).

18. *Flowers II*, 295 F.3d at 970. The administrative record revealed that Sergeant Major Flowers chose to accept adjudication under Article 15 and agreed to retire in lieu of trial by court-martial. *Id.* (citing the administrative record at 157-58, 162-63).

19. *Id.*

20. *Flowers I*, 85 F. Supp. 2d at 994.

21. *Id.* at 995.

22. *Flowers II*, 295 F.3d at 966.

23. See 12 U.S.C. § 3403(b) (2000) ("A financial institution shall not release the financial records of a customer until the Government authority seeking such records certifies in writing to the financial institution that it has complied with the applicable provisions of [the RFPA].").

24. *Flowers II*, 295 F.3d at 969.

25. *Id.* at 974.

26. *Id.* (citing 12 U.S.C. § 3413(e)).

ings meet the litigation requirement.³⁰ Citing *United States v. Samuels*,³¹ the court found that the Army had met the requirement that the government authority and the bank customer be parties to the litigation.³²

The court next turned to the question of whether an Article 32 subpoena of the bank records was under the Federal Rules of Civil or Criminal Procedure or under comparable rules of other courts. The court held that it was not,³³ noting that the UCMJ specifically authorizes the issuance of a subpoena in court-martial proceedings.³⁴ There is no such authority, however, for issuing subpoenas for Article 32 proceedings.³⁵ The court thus concluded that the trial counsel lacked subpoena power.³⁶

The Army argued that “[t]he fact that the subpoena was not specifically authorized by the UCMJ or the RCM does not mean that the subpoenaed records were not sought ‘under’ those rules within the meaning of 12 U.S.C. § 3413(e).”³⁷ The Army also argued that the word “under” in section 3413(e) should be construed to “embrace an Article 32 proceeding.”³⁸ The Army analogized the situation to that of federal question jurisdiction under 28 U.S.C. § 1331, and pointed out that the “arising under” requirement of the statute “can be met even if the case ultimately lacks merit.”³⁹

The Ninth Circuit disagreed. The court first noted that the subpoena stated on its face that it was issued for an Article 32 hearing, thus invoking nonexistent legal authority as the basis for its issuance. Second, the court found that in the context of 12 U.S.C. § 3413(e), the meaning of the word “under” is plain.⁴⁰ The court noted that “[s]ection 3413(e) only exempts from the RFPA financial records sought by a government authority ‘under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts,’”⁴¹ and concluded that “[t]he exemption’s reference to ‘rules’ presumes the existence of some rule that governs procedures for obtaining the sought-after information.”⁴² Because neither “[t]he Federal Rules of Civil or Criminal Procedure, the UCMJ, the RCM, nor any other rule authorizes the use of a subpoena in such a proceeding . . . the Army’s issuance of the Article 32 subpoena to obtain the Flowers’ financial records was not ‘under’ a rule as that term is used in 12 U.S.C. § 3413(e).”⁴³ Thus, the court held, “where no rule governs the issuance of the subpoena by which financial records are sought, that subpoena cannot be considered as having been issued ‘under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts’ for the purpose of 12 U.S.C. § 3413(e).”⁴⁴

27. *Id.* at 971 (citing the “comparable rules” exception at 12 U.S.C. § 3413(e)). The comparable rules exception consists of four requirements: “the applicable financial records must be sought by (1) a governmental authority, (2) under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts, (3) in connection with the litigation, (4) to which the governmental authority and the customer are parties.” 12 U.S.C. § 3413(e).

28. *Flowers II*, 295 F.3d at 971.

29. *United States v. Payne*, 3 M.J. 354, 355 n.5 (C.M.A. 1977); *United States v. Burrow*, 16 C.M.R. 94, 96-97 (C.M.A. 1966); *United States v. Samuels*, 10 C.M.R. 206, 213 (C.M.A. 1959); *United States v. McCarty*, 25 M.J. 667, 670 (A.F.C.M.R. 1987).

30. *Flowers II*, 295 F.3d at 971.

31. 10 C.M.R. 206, 212 (C.M.A. 1959).

32. *Id.*

33. *Flowers II*, 295 F.3d at 972.

34. 10 U.S.C. § 846 (2000).

35. *Flowers II*, 295 F.3d at 972.

36. *Id.* at 975-76. The court also held that the subpoena did not fit within the exemption of the RFPA for grand jury proceedings, 12 U.S.C. 3413(i) (2000). The court explained that although there is similarity between a grand jury and an Article 32 proceeding, an Article 32 proceeding is not conducted by a grand jury with subpoena power. An investigating officer without subpoena powers conducts an Article 32 investigation. *Flowers II*, 295 F.3d at 975-76; see MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 405 (2002) [hereinafter MCM].

37. *Flowers II*, 295 F.3d at 974.

38. *Id.*

39. *Id.*

40. *Id.* (citing 12 U.S.C. § 3413(e) (2000)).

41. *Id.*

42. *Id.* See, e.g., FED. R. CIV. P. 45; FED. R. CRIM. P. 17; 10 U.S.C. § 846; MCM, *supra* note 36, R.C.M. 703(e)(2)(C).

43. *Flowers II*, 295 F.3d at 974.

Conclusion

Flowers provides two salient lessons that trial counsel must understand: first, trial counsel do not have the power to “subpoena” civilians (or evidence under civilian control) for use at Article 32 investigations; second, the means they use to obtain financial records under the RFPA must depend on the status of their case in the litigation process. Ignorance of the law and legal procedures for obtaining financial records is no excuse for violating federal law and exposing the Army to liability. The RFPA provides account holders a private right of action against the government when it violates their rights under the statute; this makes understanding the provisions of the RFPA important. In *Flowers*, for example, the Ninth Circuit remanded to the District Court to allow the Flowers to amend their complaint to add the Army as a defendant.⁴⁵ The Ninth Circuit’s ruling opens the door for courts to hold the Army liable when it obtains financial records in violation of the RFPA. That potential liability includes: (1) damages of \$100 per violation; (2) any “actual damages” sustained as a result of the disclosure; and (3) in the case of willful or intentional violations, punitive damages.⁴⁶

Finally, in *Flowers*, the Ninth Circuit noted the limitations of Article 32 investigations when compared to grand jury proceedings in federal courts. These limitations suggest a need to update the UCMJ and the Rules for Courts-Martial to grant trial counsel or investigating officers subpoena authority at Article 32 proceedings.⁴⁷ CPT Witherspoon and Ms. Solomon.⁴⁸

Court Strikes Down Post-Award Attempt to Make a Good Procurement Better

Introduction

On 13 March 2002, the U.S. Court of Federal Claims (COFC) enjoined the Army from taking post-award corrective action in *MCII Generator & Electronic v. United States*.⁴⁹ This

case illustrates that the COFC appears unwilling to allow the Army to take corrective action unless the administrative record establishes that the proposed corrective action remedies either a defect or deficiency in the original procurement. The case also raises the issue of whether an agency may take corrective action after award to improve an already proper procurement.

Background

On 23 May 2001, the Army issued a Request for Proposal (RFP) for the procurement of Tactical Quiet Generators.⁵⁰ On 26 September 2001, the Army awarded the contract to MCII Generators and Electric, Inc. (MCII). On 12 October 2001, an unsuccessful offeror, Engineered Electric Company, doing business as Fermont, filed a post-award bid protest with the General Accounting Office (GAO) that alleged a series of errors by the Army, including: (1) improper evaluation of price by not evaluating packaging and marking; and (2) improper evaluation of MCII’s past performance.⁵¹

The Army defended the procurement and argued that the GAO should deny Fermont’s protest. On 28 November 2001, the GAO posed certain questions to the Army about Fermont’s allegations. On 6 December 2001, the Army advised the GAO that it would take corrective action by re-opening the solicitation and that, at a minimum, the Army would amend the price evaluation criteria. Based on the proposed corrective action, the GAO dismissed Fermont’s protest.⁵²

On 29 January 2001, the Army amended the RFP in accordance with its representation to the GAO. The amendments included a revision of its price evaluation criteria to incorporate a formula for evaluating packaging and marking costs (P/M costs).⁵³ On 30 January 2001, MCII sued in the COFC, asking the court to enjoin the Army’s proposed corrective action and to confirm its suspended award. The gravamen of MCII’s complaint was that the Army’s decision to take corrective action to

44. *Id.* at 975.

45. *Id.* at 977.

46. 12 U.S.C. § 3417 (2000).

47. In response to the Ninth Circuit’s ruling, the Army Litigation Division is considering recommending changes to the Rules for Courts Martial that would give trial counsel limited subpoena power to obtain evidence for presentation at Article 32 investigations.

48. Ms. Jennifer Solomon worked as a summer intern in the General Litigation Branch, U.S. Army Litigation Division, during the summer of 2002.

49. No. 02-85C, 2002 U.S. Claims Lexis 86 (March 13, 2002).

50. *Id.* at *2-3.

51. *Id.* at *3.

52. *Id.*

53. *Id.* (citing the administrative record at page 1504).

re-solicit as to price, which entailed amending the RFP to evaluate P/M costs, was arbitrary and capricious.⁵⁴

Decision

The COFC sustained the bid protest; it enjoined the Army from taking corrective action to re-open competition and from re-soliciting through a revised RFP. Based on the administrative record, the COFC found that the Army's decision to re-solicit was "arbitrary, capricious and not in accordance with law."⁵⁵ The court stated "that the decision to take 'corrective action' must be rationally related to the defect that is identified."⁵⁶ It went on to state that "[t]he problem in this case is identifying the defect that supports the decision to re-open competition; or if not a defect or deficiency, at least the reason for the decision."⁵⁷ The COFC found that the administrative record did not identify any defect supporting the re-solicitation of price.⁵⁸ In fact, the court determined that the administrative record demonstrated that the Army firmly believed that its original evaluation of price was proper and comported with "sound business judgment."⁵⁹

Having found that neither a defect nor a deficiency played a role in the Army's decision to re-solicit the procurement as to price, the COFC then raised the issue of whether the Army could change an RFP after award to achieve an improved result or to make a "good result even better."⁶⁰ The COFC stated that "even if we frame the legal question this way, support in the Administrative Record and legal authority are both lacking."⁶¹ The COFC then stated that even "if an 'improved' award decision is to be the justification [for corrective action], the record

would have to demonstrate that likely improvement."⁶² The COFC held that the administrative record did not support a claim that the inclusion of P/M costs into the price evaluation formula provided a better result for the Army. As such, the COFC found "no asserted or substantiated reason" in the administrative record for the decision to re-solicit as to price, and enjoined the Army from taking corrective action.⁶³

Conclusion

This case illustrates that the COFC seems unwilling to allow an agency to take post-award corrective action in the form of re-soliciting, absent a reasonable determination that some defect or deficiency would otherwise warrant a correction. The COFC also raised—but left open—the issue of whether any situation could justify an agency to take post-award corrective action to make a non-defective procurement better. Lastly, this decision puts agencies on notice that the amount of deference the GAO gives to the scope of an agency's proposed corrective action may differ from the amount of deference agencies can expect from the COFC. In this case, the GAO dismissed the protest, finding that the agency provided appropriate relief through its proposed corrective action, thereby making the protest moot.⁶⁴ This was in stark contrast to the COFC, which held that the agency's rationale for the corrective action was arbitrary, capricious, and not in accordance with the law.⁶⁵ Agencies that formulate corrective actions must be mindful that their decisions might eventually end up being reviewed before the COFC. Major Salussolia.

54. *Id.* MCH's complaint also alleged that the Army's corrective action to re-evaluate past performance was arbitrary and capricious. After MCH filed the complaint, however, all parties agreed that the corrective action as to the past performance was warranted and not at issue before the court. *Id.* at *4.

55. *Id.* at *1.

56. *Id.* at *3.

57. *Id.* at *4-5.

58. *Id.* at *5.

59. *Id.* at *6.

60. *Id.*

61. *Id.*

62. *Id.* at *8.

63. *Id.* at *10-12.

64. Fermont, Comp. Gen. B-289162, B-289162.2, B-289162.3, Dec. 11, 2001 (unpublished) (on file with author).

65. *MCH*, 2002 U.S. Claims Lexis 86, at *1.

Case Note

Federal Court Keeps Army Out of Custody Fight

Introduction

Recently, the U.S. District Court for the District of New Jersey, citing the historical precedent set by the federal courts, held that federal courts lack the power to involve themselves in domestic child custody matters. In *Powell v. Fort Dix Department of Defense Police Department*,⁶⁶ a non-custodial parent sued the Fort Dix Police Department (Department) for damages when the Department refused to enforce a state court child custody order. In granting the Department's motion to dismiss, the court determined that it did not have jurisdiction to hear the matter.

Background

Mr. Carroll Powell and his ex-wife were litigating custody and visitation rights over their daughter in the New Jersey Superior Court. The dispute between the parents was bitter; the court had already issued mutual restraining orders.⁶⁷ Although neither parent resided on Fort Dix, their daughter attended and participated in activities at a swimming pool on post.⁶⁸ The Burlington County Superior Court had thus designated the Fort Dix swimming pool as the location where Mr. and Mrs. Powell were to transfer custody of their daughter.⁶⁹ The custody exchanges had resulted in numerous confrontations between the two parents, often requiring the Department's officers to

intervene. Each parent had requested the Department's intervention on different occasions. Mr. Powell became frustrated with the visitation arrangement and sued the Department after both he and Mrs. Powell accused each other of violating the terms of the state court's visitation order.⁷⁰

The crux of Mr. Powell's complaint was that the Department was interfering with his visitation rights under the visitation order by not ordering his wife to comply with the visitation schedule in its terms.⁷¹ In his four-count complaint, Mr. Powell alleged that the Department violated three federal criminal statutes: Obstruction of Court Orders,⁷² Conspiracy Against Rights,⁷³ and Federally Protected Activities.⁷⁴ He also alleged that the Department failed to accord the Burlington County Superior Court's domestic violence restraining order full faith and credit by not enforcing its terms against Mrs. Powell.⁷⁵

Fort Dix's Defense

In his complaint, Mr. Powell asked for damages for alleged violations of his rights under the U.S. Constitution and federal statutes. The legal basis for his claim appeared to be a common law tort theory or one under *Bivens v. Six Unnamed Agents of the Federal Bureau of Narcotics*.⁷⁶ In response, the Department moved to dismiss the complaint under Federal Rule of Civil Procedure (Rule) 12 (b) (1) and (6),⁷⁷ and for summary judgment pursuant to Federal Rule of Civil Procedure 56.⁷⁸ The Department first argued that the complaint failed to state a cognizable *Bivens* claim because a *Bivens* claim cannot lie against a federal agency, and the federal criminal statutes cited in the

66. No. 01-5319, slip op. (D.N.J. June 5, 2002) (on file with author).

67. *Id.* at 1.

68. *Id.* at 1-2.

69. *Id.* at 2.

70. *Id.* The administrative record did not explain why the command did not bar the Powells from Fort Dix, an exclusive federal enclave. *Id.*

71. *Id.* Under the Supremacy Clause of the U.S. Constitution, a state court does not have the power to issue an order requiring an exclusive federal enclave such as Fort Dix to allow civilians to conduct their private affairs on its land. U.S. CONST. art. VI, cl. 2; *Mayo v. United States*, 319 U.S. 441, 445 (1943); *see also* *United States v. Alaska Pub. Util. Comm.*, 23 F.3d 257 (9th Cir. 1994).

72. 18 U.S.C. § 1509 (2000).

73. *Id.* § 241.

74. *Id.* § 245.

75. *Powell v. Powell*, No. FV 03-0743-022 (Burlington County Super. Ct. Oct. 26, 2001).

76. 403 U.S. 388 (1971). Victims of constitutional violations by federal employees or agents may maintain *Bivens* claims for damages despite the absence of any statute specifically conferring such rights. *Bivens*, 403 U.S. at 390-97. Aggrieved parties may sue federal employees directly and in their individual capacities for violations of constitutionally protected rights. *Id.* Federal officials performing discretionary functions may be liable in *Bivens* actions if they knew or should have known that they were violating clearly established constitutional rights. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Individuals may not sue federal agencies for constitutional violations under *Bivens*. *See* *FDIC v. Meyer*, 510 U.S. 471 (1994).

77. FED. R. CIV. P. 12 (b) (1) (governing "lack of jurisdiction over the subject matter"); FED. R. CIV. P. 12 (b) (6) (governing "failure to state a claim upon which relief can be granted").

complaint do not provide a private cause of action. The Department also argued that the court lacked subject matter jurisdiction over any common law tort claims because the plaintiff had failed to comply with the jurisdictional prerequisites under the Federal Tort Claims Act (FTCA).⁷⁹

Decision

The court found that although the case was styled as a tort action, it merely amounted to a “garden variety” custody dispute in which the Department involuntarily became involved.⁸⁰ Relying on Supreme Court precedent, the court concluded that federal courts do not have power to involve themselves in cases of divorce, alimony, or child custody.⁸¹ Although Mr. Powell styled his case as a tort action, the court could not hold in Mr. Powell’s favor without construing the meaning of state court orders involving custody and visitation.⁸²

The court went on to find that to the extent that the case alleged the commission of a constitutional tort under *Bivens*, Mr. Powell failed to identify the particular constitutional provision that the Department violated.⁸³ The court continued by stating that “a *Bivens* action, while appropriate against identified individuals who have violated a plaintiff’s constitutional rights, may not be brought against a government agency.”⁸⁴ The court found that to the extent that Mr. Powell was attempting to bring a non-constitutionally based tort action against the Department, an agency of the federal government, such an action would have to comply with the Federal Tort Claims Act (FTCA).⁸⁵ Under the FTCA, submission of an administrative

tort claim to the federal agency, the Department in this case, is a jurisdictional prerequisite to filing suit. The court, however, found that Mr. Powell’s complaint failed to allege that he had filed a claim with the appropriate federal agency. The court therefore held that it lacked jurisdiction to hear a complaint based on a non-constitutionally based tort theory.⁸⁶

Finally, the court addressed Mr. Powell’s allegation that the Department’s actions violated the federal criminal statutes cited in the complaint by noting that federal criminal statutes do not generally support an implied civil cause of action.⁸⁷ The court stated that “a private tort suit for relief based on a criminal statute does not state a valid claim.”⁸⁸

In his remaining count, Mr. Powell alleged that the Department violated the federal statute requiring the government to give the full faith and credit to protective orders by failing to enforce the Burlington County Superior Court’s restraining order.⁸⁹ Although the court recognized Congress’s effort to combat domestic violence when it enacted 28 U.S.C. § 2265(a), it held that the Department did not violate this statute, which applies to courts—not law enforcement agencies. The court reasoned that because the Department is not a court, it was not in a position to “enforce” state court orders within the meaning of the federal statute.⁹⁰

Conclusion

Powell is consistent with precedent that federal courts do have jurisdiction over child custody cases, which are exclu-

78. Defendant’s Memorandum of Law Supporting Motion to Dismiss at 3-6, *Powell v. Fort Dix Dep’t of Defense Police Dep’t*, No. 01-5319 (D.N.J. June 5, 2002) (on file with author).

79. Under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671-2680, aggrieved parties must submit administrative claims to federal agencies before filing suit. *Id.*

80. *Powell*, No. 01-5319, slip op. at 3.

81. *Id.* (citing *Barber v. Barber*, 62 U.S. (21 How.) 582 (1859) (“[T]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States.”)); *see also* *Ankenbrandt v. Richards*, 504 U.S. 689 (1992) (“[I]t makes far more sense to retain the rule that federal courts lack power to [rule in domestic matters] because of the special proficiency developed by state tribunals over the past century and a half in handling issues that arise in [these matters.]”).

82. *Powell*, No. 01-5319, slip op. at 3.

83. *Id.* at 4.

84. *Id.* (citing *Federal Deposit Ins. Corp. v. Meyer*, 510 U.S. 471, 483-86 (1994)).

85. 28 U.S.C. §§ 2671-2680 (2000).

86. *Powell*, No. 01-5319, slip op. at 5.

87. *Id.* at 4. (citing *Thompson v. Thompson*, 484 U.S. 174, 179-80 (1988); *Cort v. Ash*, 422 U.S. 66 (1975)).

88. *Powell*, No. 01-5319, slip op. at 4.

89. 18 U.S.C. § 2265 (2000).

90. *Powell*, No. 01-5319, slip op. at 5.

sively a state court function. Plaintiffs cannot overcome this jurisdictional hurdle by styling their actions as *Bivens* claims or violations of federal criminal statutes. When a domestic situation threatens to become disruptive or burdensome to the command, the staff judge advocate should advise the commander to bar the disruptive individuals from the installation. If a command learns that a state court has ordered federal law enforce-

ment officers to enforce a state child custody order, the staff judge advocate should contact his nearest United States Attorney. Such an order presumptively violates the Supremacy Clause, and may warrant action in a federal court to enjoin enforcement of the state court order.⁹¹
CPT Witherspoon/ Mr. McFeatters.⁹²

91. *See generally* U.S. CONST. art. VI. A state court may not properly order federal officers to perform acts that would violate their federal duties. Sovereign immunity and the Supremacy Clause also bar state courts from entering such orders. *See id.*; *Bosaw v. National Treasury Employees Union*, 887 F. Supp. 1199 (S.D. Ind. 1995).

92. Mr. Dale McFeatters worked as a summer intern in the General Litigation Branch, U.S. Army Litigation Division, during the summer of 2002.

CLE News

1. Resident Course Quotas

Attendance at resident continuing legal education (CLE) courses at The Judge Advocate General's School, United States Army (TJAGSA), is restricted to students who have confirmed reservations. Reservations for TJAGSA CLE courses are managed by the Army Training Requirements and Resources System (ATRRS), the Army-wide automated training system. If you do not have a confirmed reservation in ATRRS, you do not have a reservation for a TJAGSA CLE course.

Active duty service members and civilian employees must obtain reservations through their directorates of training or through equivalent agencies. Reservists must obtain reservations through their unit training offices or, if they are non-unit reservists, through the United States Army Personnel Center (ARPERCEN), ATTN: ARPC-OPB, 1 Reserve Way, St. Louis, MO 63132-5200. Army National Guard personnel must request reservations through their unit training offices.

Questions regarding courses should be directed to the Deputy, Academic Department at 1-800-552-3978, extension 304.

When requesting a reservation, you should know the following:

TJAGSA School Code—181

Course Name—133d Contract Attorneys Course 5F-F10

Course Number—133d Contract Attorney's Course 5F-F10

Class Number—133d Contract Attorney's Course 5F-F10

To verify a confirmed reservation, ask your training office to provide a screen print of the ATRRS R1 screen, showing by-name reservations.

The Judge Advocate General's School is an approved sponsor of CLE courses in all states that require mandatory continuing legal education. These states include: AL, AR, AZ, CA, CO, CT, DE, FL, GA, ID, IN, IA, KS, KY, LA, ME, MN, MS, MO, MT, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, WA, WV, WI, and WY.

2. TJAGSA CLE Course Schedule

2003

March 2003

3-7 March	66th Fiscal Law Course (5F-F12).
10-14 March	27th Administrative Law for Military Installations Course (5F-F24).

17-21 March	4th Advanced Contract Law Course (5F-F103).
17-28 March	19th Criminal Law Advocacy Course (5F-F34).
24-28 March	176th Senior Officers' Legal Orientation Course (5F-F1).
31 March - 4 April	14th Law for Paralegal NCOs Course (512-27D/20/30).

April 2003

7-11 April	9th Fiscal Law Comptroller Accreditation Course (Korea).
14-17 April	2003 Reserve Component Judge Advocate Workshop (5F-F56).
21-25 April	1st Ethics Counselors' Course (5F-F202).
21-25 April	14th Law for Paralegal NCOs Course (512-27D/20/30).
28 April - 9 May	150th Contract Attorneys' Course (5F-F10).
28 April - 16 May	46th Military Judges' Course (5F-F33).
28 April - 27 June	10th Court Reporter Course (512-27DC5).

May 2003

5-16 May	2003 PACOM Ethics Counselors' Workshop (5F-F202-P).
12-16 May	52d Legal Assistance Course (5F-F23).

June 2003

2-6 June	6th Intelligence Law Course (5F-F41).
2-6 June	177th Senior Officers' Legal Orientation Course (5F-F1).
2-27 June	10th JA Warrant Officer Basic Course (7A-550A0).

3-27 June	161st Officer Basic Course (Phase I, Fort Lee) (5-27-C20).	September 2003	
9-11 June	6th Team Leadership Seminar (5F-F52S).	8-12 September	178th Senior Officers' Legal Orientation Course (5F-F1).
9-13 June	10th Fiscal Law Comptroller Accreditation Course (Alaska) (5F-F14-A).	8-12 September	2003 USAREUR Administrative Law CLE (5F-F24E).
9-13 June	33d Staff Judge Advocate Course (5F-F52).	15-26 September	20th Criminal Law Advocacy Course (5F-F34).
23-27 June	14th Legal Administrators' Course (7A-550A1).	16 September - 9 October	162d Officer Basic Course (Phase I, Fort Lee) (5-27-C20).
27 June - 5 September	161st Officer Basic Course (Phase II, TJAGSA) (5-27-C20).	October 2003	
July 2003		6-10 October	2003 JAG Worldwide CLE (5F-JAG).
7 July - 1 August	4th JA Warrant Officer Advanced Course (7A0550A2).	10 October - 18 December	162d Officer Basic Course (Phase II, TJAGSA) (5-27-C20).
14-18 July	80th Law of War Course (5F-F42).	20-24 October	57th Federal Labor Relations Course (5F-F22).
21-25 July	7th Chief Paralegal NCO Course (512-27D-CLNCO).	20-24 October	2003 USAREUR Legal Assistance CLE (5F-F23E).
21-25 July	14th Senior Paralegal NCO Management Course (512-27D/40/50).	22-24 October	2d Advanced Labor Relations Course (5F-F21).
21-25 July	34th Methods of Instruction Course (5F-F70).	26-27 October	8th Speech Recognition Training (512-27DC4).
28 July - 8 August	151st Contract Attorneys Course (5F-F10).	27-31 October	3d Domestic Operational Law Course (5F-F45).
August 2003		27-31 October	67th Fiscal Law Course (5F-F12).
4-8 August	21st Federal Litigation Course (5F-F29).	27 October - 7 November	6th Speech Recognition Course (512-27DC4).
4 August - 3 October	11th Court Reporter Course (512-27DC5).	November 2003	
11-22 August	40th Operational Law Course (5F-F47).	3-7 November	53d Legal Assistance Course (5F-F23).
11 August 03 - 22 May 04	52d Graduate Course (5-27-C22).	12-15 November	27th Criminal Law New Developments Course (5F-F35).
25-29 August	9th Military Justice Managers' Course (5F-F31).	17-21 November	3d Court Reporting Symposium (512-27DC6).
		17-21 November	179th Senior Officers' Legal Orientation Course (5F-F1).

17-21 November	2003 USAREUR Operational Law CLE (5F-F47E).	9-13 February	2004 Maxwell AFB Fiscal Law Course.
December 2003		23-27 February	68th Fiscal Law Course (5F-F12).
1-5 December	2003 USAREUR Criminal Law CLE (5F-F35E).	23 February - 5 March	41st Operational Law Course (5F-F47).
2-5 December	2003 Government Contract & Fiscal Law Symposium (5F-F11).	March 2004	
8-12 December	7th Income Tax Law Course (5F-F28).	1-5 March	69th Fiscal Law Course (5F-F12).
January 2004		8-12 March	28th Administrative Law for Military Installations Course (5F-F24).
4-16 January	2004 JAOAC (Phase II) (5F-F55).	15-19 March	5th Contract Litigation Course (5F-F102).
5-9 January	2004 USAREUR Contract & Fiscal Law CLE (5F-F15E).	15-26 March	21st Criminal Law Advocacy Course (5F-F34).
5-9 January	2004 USAREUR Income Tax Law CLE (5F-F28E).	22-26 March	181st Senior Officers' Legal Orientation Course (5F-F1).
6-29 January	163d Officer Basic Course (Phase I, Fort Lee) (5-27-C20).	April 2004	
12-16 January	2004 PACOM Income Tax Law CLE (5F-F28P).	12-15 April	2004 Reserve Component Judge Advocate Workshop (5F-F56).
20-23 January	2004 Hawaii Income Tax Law CLE (5F-F28H).	19-23 April	6th Ethics Counselors' Course (5F-F202).
21-23 January	10th Reserve Component General Officers Legal Orientation Course (5F-F3).	19-23 April	15th Law for Paralegal NCOs Course (512-27D/20/30).
26-30 January	9th Fiscal Law Comptroller Accreditation Course (Hawaii) (5F-F14-H).	26 April - 7 May	152d Contract Attorneys' Course (5F-F10).
26-30 January	180th Senior Officers' Legal Orientation Course (5F-F1).	26 April - 14 May	47th Military Judges' Course (5F-F33).
26 January - 26 March	12th Court Reporter Course (512-27DC5).	26 April - 25 June	13th Court Reporter Course (512-27DC5).
30 January - 9 April 04	163d Officer Basic Course (Phase II, TJAGSA) (5-27-C20).	May 2004	
February 2004		10-14 May	53d Legal Assistance Course (5F-F23).
2-6 February	81st Law of War Course (5F-F42).	24-28 May	182d Senior Officers Legal Orientation Course (5F-F1).
		June 2004	
		1-3 June	6th Procurement Fraud Course (5F-F101).

1-25 June	11th JA Warrant Officer Basic Course (7A-550A0).
2-24 June	164th Officer Basic Course (Phase I, Fort Lee) (5-27-C20).
7-9 June	7th Team Leadership Seminar (5F-F52S).
7-11 June	34th Staff Judge Advocate Course (5F-F52).
12-16 June	82d Law of War Workshop (5F-F42).
14-18 June	8th Chief Paralegal NCO Course (512-27D-CLNCO).
14-18 June	15th Senior Paralegal NCO Management Course (512-27D/40/50).
21-25 June	15th Legal Administrators' Course (7A-550A1).
25 June - 2 September	164th Officer Basic Course (Phase II, TJAGSA) (5-27-C20).

July 2004

12 July - 6 August	5th JA Warrant Officer Advanced Course (7A-550A2).
19-23 July	35th Methods of Instruction Course (5F-F70).
27 July - 6 August	153d Contract Attorneys' Course (5F-F10).

August 2004

2-6 August	22d Federal Litigation Course (5F-F29).
2 August - 1 October	14th Court Reporter Course (512-27DC5).
9-20 August	42d Operational Law Course (5F-F47).
9 August - 22 May 05	53d Graduate Course (5-27-C22).
23-27 August	10th Military Justice Managers' Course (5F-F31).

September 2004

7-10 September	2004 USAREUR Administrative Law CLE (5F-F24E).
13-17 September	54th Legal Assistance Course (5F-F23).
13-24 September	22d Criminal Law Advocacy Course (5F-F34).

October 2004

4-8 October	2004 JAG Worldwide CLE (5F-JAG).
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3. Civilian-Sponsored CLE Courses

For further information on civilian courses in your area, please contact one of the institutions listed below:

AAJE: American Academy of Judicial Education
P.O. Box 728
University, MS 38677-0728
(662) 915-1225

ABA: American Bar Association
750 North Lake Shore Drive
Chicago, IL 60611
(312) 988-6200

AGACL: Association of Government Attorneys
in Capital Litigation
Arizona Attorney General's Office
ATTN: Jan Dyer
1275 West Washington
Phoenix, AZ 85007
(602) 542-8552

ALIABA: American Law Institute-American Bar
Association
Committee on Continuing Professional
Education
4025 Chestnut Street
Philadelphia, PA 19104-3099
(800) CLE-NEWS or (215) 243-1600

ASLM: American Society of Law and Medicine
Boston University School of Law
765 Commonwealth Avenue
Boston, MA 02215
(617) 262-4990

CCEB: Continuing Education of the Bar
University of California Extension
2300 Shattuck Avenue
Berkeley, CA 94704

	(510) 642-3973	LSU:	Louisiana State University Center on Continuing Professional Development Paul M. Herbert Law Center Baton Rouge, LA 70803-1000 (504) 388-5837
CLA:	Computer Law Association, Inc. 3028 Javier Road, Suite 500E Fairfax, VA 22031 (703) 560-7747	MLI:	Medi-Legal Institute 15301 Ventura Boulevard, Suite 300 Sherman Oaks, CA 91403 (800) 443-0100
CLESN:	CLE Satellite Network 920 Spring Street Springfield, IL 62704 (217) 525-0744 (800) 521-8662	NCDA:	National College of District Attorneys University of Houston Law Center 4800 Calhoun Street Houston, TX 77204-6380 (713) 747-NCDA
ESI:	Educational Services Institute 5201 Leesburg Pike, Suite 600 Falls Church, VA 22041-3202 (703) 379-2900	NITA:	National Institute for Trial Advocacy 1507 Energy Park Drive St. Paul, MN 55108 (612) 644-0323 in (MN and AK) (800) 225-6482
FBA:	Federal Bar Association 1815 H Street, NW, Suite 408 Washington, DC 20006-3697 (202) 638-0252	NJC:	National Judicial College Judicial College Building University of Nevada Reno, NV 89557
FB:	Florida Bar 650 Apalachee Parkway Tallahassee, FL 32399-2300	NMTLA:	New Mexico Trial Lawyers' Association P.O. Box 301 Albuquerque, NM 87103 (505) 243-6003
GICLE:	The Institute of Continuing Legal Education P.O. Box 1885 Athens, GA 30603 (706) 369-5664	PBI:	Pennsylvania Bar Institute 104 South Street P.O. Box 1027 Harrisburg, PA 17108-1027 (717) 233-5774 (800) 932-4637
GII:	Government Institutes, Inc. 966 Hungerford Drive, Suite 24 Rockville, MD 20850 (301) 251-9250	PLI:	Practicing Law Institute 810 Seventh Avenue New York, NY 10019 (212) 765-5700
GWU:	Government Contracts Program The George Washington University National Law Center 2020 K Street, NW, Room 2107 Washington, DC 20052 (202) 994-5272	TBA:	Tennessee Bar Association 3622 West End Avenue Nashville, TN 37205 (615) 383-7421
IICLE:	Illinois Institute for CLE 2395 W. Jefferson Street Springfield, IL 62702 (217) 787-2080	TLS:	Tulane Law School Tulane University CLE 8200 Hampson Avenue, Suite 300 New Orleans, LA 70118 (504) 865-5900
LRP:	LRP Publications 1555 King Street, Suite 200 Alexandria, VA 22314 (703) 684-0510 (800) 727-1227		

UMLC:	University of Miami Law Center P.O. Box 248087 Coral Gables, FL 33124 (305) 284-4762	California*	Director Office of Certification The State Bar of CA 180 Howard Street San Francisco, CA 94102 (415) 538-2133 http://calbar.org	-Twenty-five hours over three years of which four hours required in ethics, one hour required in substance abuse and emotional distress, one hour required in elimination of bias. -Reporting date/period: Group 1 (Last Name A-G) 1 Feb 01-31 Jan 04 and every thirty-six months thereafter) Group 2 (Last Name H-M) 1 Feb 007-31 Jan 03 and every thirty-six months thereafter) Group 3 (Last Name N-Z) 1 Feb 99-31 Jan 02 and every thirty-six months thereafter)
UT:	The University of Texas School of Law Office of Continuing Legal Education 727 East 26th Street Austin, TX 78705-9968			
VCLE:	University of Virginia School of Law Trial Advocacy Institute P.O. Box 4468 Charlottesville, VA 22905.			

4. Mandatory Continuing Legal Education Jurisdiction and Reporting Dates

<u>State</u>	<u>Local Official</u>	<u>CLE Requirements</u>			
Alabama**	Director of CLE AL State Bar 415 Dexter Ave. Montgomery, AL 36104 (334) 269-1515 http://www.alabar.org/	-Twelve hours per year. -Military attorneys are exempt but must declare exemption. -Reporting date: 31 December.	Colorado	Executive Director CO Supreme Court Board of CLE & Judicial Education 600 17th St., Ste., #520S Denver, CO 80202 (303) 893-8094 http://www.courts.state.co.us/cle/cle.htm	-Forty-five hours over three year period, seven hours must be in legal ethics. -Reporting date: Anytime within three-year period.
Arizona	Administrative Assistant State Bar of AZ 111 W. Monroe St. Ste. 1800 Phoenix, AZ 85003-1742 (602) 340-7328 http://www.azbar.org/AttorneyResources/mcle.asp	-Fifteen hours per year, three hours must be in legal ethics. -Reporting date: 15 September.	Delaware	Executive Director Commission on CLE 200 W. 9th St. Ste. 300-B Wilmington, DE 19801 (302) 577-7040 http://courts.state.de.us/cle/rules.htm	-Twenty-four hours over two years including at least four hours in Enhanced Ethics. See website for specific requirements for newly admitted attorneys. -Reporting date: Period ends 31 December.
Arkansas	Secretary Arkansas CLE Board Supreme Court of AR 120 Justice Building 625 Marshall Little Rock, AR 72201 (501) 374-1855 http://courts.state.ar.us/clerkules/htm	-Twelve hours per year, one hour must be in legal ethics. -Reporting date: 30 June.	Georgia	GA Commission on Continuing Lawyer Competency 800 The Hurt Bldg. 50 Hurt Plaza Atlanta, GA 30303 (404) 527-8712 http://www.gabar.org/ga_bar/frame7.htm	-Twelve hours per year, including one hour in legal ethics, one hour professionalism and three hours trial practice. -Out-of-state attorneys exempt. -Reporting date: 31 January
			Idaho	Membership Administrator ID State Bar P.O. Box 895 Boise, ID 83701-0895 (208) 334-4500 http://www.state.id.us/isb/mcle_rules.htm	-Thirty hours over a three year period, two hours must be in legal ethics. -Reporting date: 31 December. Every third year determined by year of admission.

Indiana	Executive Director IN Commission for CLE Merchants Plaza 115 W. Washington St. South Tower #1065 Indianapolis, IN 46204-3417 (317) 232-1943 http://www.state.in.us/judiciary/courtrules/admiss.pdf	-Thirty-six hours over a three year period (minimum of six hours per year), of which three hours must be legal ethics over three years. -Reporting date: 31 December.	Minnesota	Director MN State Board of CLE 25 Constitution Ave. Ste. 110 St. Paul, MN 55155 (651) 297-7100 http://www.mb-cle.state.mn.us/	-Forty-five hours over a three-year period, three hours must be in ethics, every three years and two hours in elimination of bias. -Reporting date: 30 August.
Iowa	Executive Director Commission on Continuing Legal Education State Capitol Des Moines, IA 50319 (515) 246-8076 No web site available	-Fifteen hours per year, two hours in legal ethics every two years. -Reporting date: 1 March.	Mississippi**	CLE Administrator MS Commission on CLE P.O. Box 369 Jackson, MS 39205-0369 (601) 354-6056 http://www.msbar.org/meet.html	-Twelve hours per year, one hour must be in legal ethics, professional responsibility, or malpractice prevention. -Military attorneys are exempt. -Reporting date: 31 July.
Kansas	Executive Director CLE Commission 400 S. Kansas Ave. Suite 202 Topeka, KS 66603 (785) 357-6510 http://www.kscle.org	-Twelve hours per year, two hours must be in legal ethics. -Attorneys not practicing in Kansas are exempt. -Reporting date: Thirty days after CLE program, hours must be completed in compliance period 1 July to 30 June.	Missouri	Director of Programs P.O. Box 119 326 Monroe Jefferson City, MO 65102 (573) 635-4128 http://www.mobar.org/mobaracle/index.htm	-Fifteen hours per year, three hours must be in legal ethics every three years. -Attorneys practicing out-of-state are exempt but must claim exemption. -Reporting date: Report period is 1 July - 30 June. Report must be filed by 31 July.
Kentucky	Director for CLE KY Bar Association 514 W. Main St. Frankfort, KY 40601-1883 (502) 564-3795 http://www.kybar.org/clerkules.htm	-Twelve and one-half hours per year, two hours must be in legal ethics, mandatory new lawyer skills training to be taken within twelve months of admissions. -Reporting date: June 30.	Montana	MCLE Administrator MT Board of CLE P.O. Box 577 Helena, MT 59624 (406) 442-7660, ext. 5 http://www.montana-bar.org/	-Fifteen hours per year. -Reporting date: 1 March
Louisiana**	MCLE Administrator LA State Bar Association 601 St. Charles Ave. New Orleans, LA 70130 (504) 619-0140 http://www.lsba.org/html/rule_xxx.html	-Fifteen hours per year, one hour must be in legal ethics and one hour of professionalism every year. -Attorneys who reside out-of-state and do not practice in state are exempt. -Reporting date: 31 January.	Nevada	Executive Director Board of CLE 295 Holcomb Ave. Ste. A Reno, NV 89502 (775) 329-4443 http://www.nvbar.org/	-Twelve hours per year, two hours must be in legal ethics and professional conduct. -Reporting date: 1 March.
Maine	Administrative Director P.O. Box 527 August, ME 04332-1820 (207) 623-1121 http://www.mainebar.org/cle.html	-Eleven hours per year, at least one hour in the area of professional responsibility is recommended but not required. -Members of the armed forces of the United States on active duty; unless they are practicing law in Maine. -Report date: 31 July	New Hampshire**	Asst. to NH MCLE Board MCLE Board 112 Pleasant St. Concord, NH 03301 (603) 224-6942, ext. 122 http://www.nhbar.org	-Twelve hours per year, two hours must be in ethics, professionalism, substance abuse, prevention of malpractice or attorney-client dispute, six hours must come from attendance at live programs out of the office, as a student. -Reporting date: Report period is 1 July - 30 June. Report must be filed by 1 August.

New Mexico	Administrator of Court Regulated Programs P.O. Box 87125 Albuquerque, NM 87125 (505) 797-6056 http://www.nmbar.org/mclerules.htm	-Fifteen hours per year, one hour must be in legal ethics. -Reporting period: January 1 - December 31; due April 30.	Ohio*	Secretary of the Supreme Court Commission on CLE 30 E. Broad St. FL 35 Columbus, OH 43266-0419 (614) 644-5470 http://www.sco-net.state.oh.us/	-Twenty-four hours every two years, including one hour ethics, one hour professionalism and thirty minutes substance abuse. -Active duty military attorneys are exempt. -Reporting date: every two years by 31 January.
New York*	Counsel The NY State Continuing Legal Education Board 25 Beaver Street, Floor 8 New York, NY 10004 (212) 428-2105 or 1-877-697-4353 http://www.courts.state.ny.us	-Newly admitted: sixteen credits each year over a two-year period following admission to the NY Bar, three credits in Ethics, six credits in Skills, seven credits in Professional Practice/Practice Management each year. -Experienced attorneys: Twelve credits in any category, if registering in 2000, twenty-four credits (four in Ethics) per biennial reporting period, if registering in 2001 and thereafter. -Full-time active members of the U.S. Armed Forces are exempt from compliance. -Reporting date: every two years within thirty days after the attorney's birthday.	Oklahoma**	MCLE Administrator OK Bar Association P.O. Box 53036 Oklahoma City, OK 73152 (405) 416-7009 http://www.okbar.org/mcle/	-Twelve hours per year, one hour must be in ethics. -Active duty military attorneys are exempt. -Reporting date: 15 February.
			Oregon	MCLE Administrator OR State Bar 5200 S.W. Meadows Rd. P.O. Box 1689 Lake Oswego, OR 97035-0889 (503) 620-0222, ext. 359 http://www.osbar.org/	-Forty-five hours over three year period, six hours must be in ethics. -Reporting date: Compliance report filed every three years, except new admittees and reinstated members - an initial one year period.
			Pennsylvania**	Administrator PA CLE Board 5035 Ritter Rd. Ste. 500 P.O. Box 869 Mechanicsburg, PA 17055 (717) 795-2139 (800) 497-2253 http://www.pacle.org/	-Twelve hours per year, including a minimum one hour must be in legal ethics, professionalism, or substance abuse. -Active duty military attorneys outside the state of PA may defer their requirement. -Reporting date: annual deadlines: Group 1-30 Apr Group 2-31 Aug Group 3-31 Dec
North Carolina**	Associate Director Board of CLE 208 Fayetteville Street Mall P.O. Box 26148 Raleigh, NC 27611 (919) 733-0123 http://www.ncbar.org/CLE/MCLE.html	-Twelve hours per year including two hours in ethics/or professionalism; three hours block course every three years devoted to ethics/professionalism. -Active duty military attorneys and out-of-state attorneys are exempt, but must declare exemption. -Reporting date: 28 February.	Rhode Island	Executive Director MCLE Commission 250 Benefit St. Providence, RI 02903 (401) 222-4942 http://www.courts.state.ri.us/	-Ten hours each year, two hours must be in legal ethics. -Active duty military attorneys are exempt. -Reporting date: 30 June.
North Dakota	Secretary-Treasurer ND CLE Commission P.O. Box 2136 Bismarck, ND 58502 (701) 255-1404 No web site available	-Forty-five hours over three year period, three hours must be in legal ethics. -Reporting date: Reporting period ends 30 June. Report must be received by 31 July.	South Carolina**	Executive Director Commission on CLE and Specialization P.O. Box 2138 Columbia, SC 29202 (803) 799-5578 http://www.commcle.org/	-Fourteen hours per year, at least two hours must be in legal ethics/professional responsibility. -Active duty military attorneys are exempt. -Reporting date: 15 January.

Tennessee*	Executive Director TN Commission on CLE and Specialization 511 Union St. #1630 Nashville, TN 37219 (615) 741-3096 http://www.cleln.com/	-Fifteen hours per year, three hours must be in legal ethics/professionalism. -Nonresidents, not practicing in the state, are exempt. -Reporting date: 1 March.	West Virginia	MCLE Coordinator WV State MCLE Commission 2006 Kanawha Blvd., East Charleston, WV 25311-2204 (304) 558-7992 http://www.wvbar.org/	-Twenty-four hours over two year period, three hours must be in legal ethics, office management, and/or substance abuse. -Active members not practicing in West Virginia are exempt. -Reporting date: Reporting period ends on 30 June every two years. Report must be filed by 31 July.
Texas	Director of MCLE State Bar of TX P.O. Box 13007 Austin, TX 78711-3007 (512) 463-1463, ext. 2106 http://www.courts.state.tx.us/	-Fifteen hours per year, three hours must be in legal ethics. -Full-time law school faculty are exempt (except ethics requirement). -Reporting date: Last day of birth month each year.	Wisconsin*	Supreme Court of Wisconsin Board of Bar Examiners Tenney Bldg., Suite 715 110 East Main Street Madison, WI 53703-3328 (608) 266-9760 http://www.courts.state.wi.us/	-Thirty hours over two year period, three hours must be in legal ethics. -Active members not practicing in Wisconsin are exempt. -Reporting date: Reporting period ends 31 December every two years. Report must be received by 1 February.
Utah	MCLE Board Administrator UT Law and Justice Center 645 S. 200 East Salt Lake City, UT 84111-3834 (801) 531-9095 http://www.utahbar.org/	-Twenty-four hours, plus three hours in legal ethics every two years. -Non-residents if not practicing in state. -Reporting date: 31 January.	Wyoming	CLE Program Director WY State Board of CLE WY State Bar P.O. Box 109 Cheyenne, WY 82003-0109 (307) 632-9061 http://www.wyomingbar.org	-Fifteen hours per year, one hour in ethics. -Reporting date: 30 January.
Vermont	Directors, MCLE Board 109 State St. Montpelier, VT 05609-0702 (802) 828-3281 http://www.state.vt.us/courts/	-Twenty hours over two year period, two hours in ethics each reporting period. -Reporting date: 2 July.			
Virginia	Director of MCLE VA State Bar 8th and Main Bldg. 707 E. Main St. Ste. 1500 Richmond, VA 23219-2803 (804) 775-0577 http://www.vsb.org/	-Twelve hours per year, two hours must be in legal ethics. -Reporting date: 30 June.			* Military exempt (exemption must be declared with state) **Must declare exemption.
Washington	Executive Secretary WA State Board of CLE 2101 Fourth Ave., FL 4 Seattle, WA 98121-2330 (206) 733-5912 http://www.wsba.org/	-Forty-five hours over a three-year period, including six hours ethics. -Reporting date: 31 January.			

5. Phase I (Correspondence Phase), RC-JAOAC Deadline

The suspense for submission of all RC-JAOAC Phase I (Correspondence Phase) materials is **NLT 2400, 1 November 2003**, for those judge advocates who desire to attend Phase II (Resident Phase) at The Judge Advocate General's School (TJAGSA) in the year 2004 ("2004 JAOAC"). This requirement includes submission of all JA 151, Fundamentals of Military Writing, exercises.

This requirement is particularly critical for some officers. The 2004 JAOAC will be held in January 2004, and is a prerequisite for most JA captains to be promoted to major.

A judge advocate who is required to retake any subcourse examinations or "re-do" any writing exercises must submit the examination or writing exercise to the Non-Resident Instruction Branch, TJAGSA, for grading by the same deadline (1 November 2003). If the student receives notice of the need to re-do any examination or exercise after 1 October 2003, the notice will contain a suspense date for completion of the work.

Judge advocates who fail to complete Phase I correspondence courses and writing exercises by these suspenses will not be cleared to attend the 2004 JAOAC. Put simply, if you have not received written notification of completion of Phase I of JAOAC, you are not eligible to attend the resident phase.

If you have any further questions, contact Lieutenant Colonel J. T. Parker, telephone (800) 552-3978, ext. 357, or e-mail JT.Parker@hqda.army.mil.

Current Materials of Interest

1. The Judge Advocate General's On-Site Continuing Legal Education Training and Workshop Schedule (2002-2003 Academic Year)

<u>DATE</u>	<u>TRNG SITE/HOST UNIT</u>	<u>GENERAL OFFICER AC/RC</u>	<u>SUBJECT</u>	<u>ACTION OFFICER</u>
8-9 Mar 03	Washington, DC 10th LSO	BG Black BG Pietsch	Criminal Law; Administrative Law	CPT Mike Zito (301) 599-4440 mzito@juno.com
22-23 Mar 03	West Point, NY	TBA	Eastern States Senior JAG Workshop	COL Randall Eng (718) 520-3482 reng@courts.state.ny.us
26-27 Apr 03	Boston, MA 94th RSC	MG Marchand/ BG Arnold	Administrative Law; Contract Law	SSG Neoma Rothrock (978) 796-2143 neoma.rothrock@us.army.mil
16-18 May 03	Kansas City, MO 89th RSC	BG Carey/ BG Pietsch	Criminal Law; International Law	MAJ Anna Swallow (316) 781-1759, ext. 1228 anna.swallow@usarc-emh2.army.mil SGM Mary Hayes (816) 836-0005, ext. 267 mary.hayes@usarc-emh2.army.mil
17-18 May 03	Birmingham, AL 81st RSC	BG Wright/ BG Arnold	Criminal Law; International Law	CPT Joseph Copeland (205) 795-1980 joseph.copeland@se.usar.army.mil
	Charlottesville, VA OTJAG	All General Officers scheduled to attend	Spring Worldwide CLE	

* Prospective students may enroll for the on-sites through the Army Training Requirements and Resources System (ATRRS) using the designated Course and Class Number.

2. TJAGSA Materials Available through the Defense Technical Information Center (DTIC)

Each year The Judge Advocate General's School, U.S. Army (TJAGSA), publishes deskbooks and materials to support resident course instruction. Much of this material is useful to judge advocates and government civilian attorneys who are unable to attend courses in their practice areas, and TJAGSA receives many requests each year for these materials. Because the distribution of these materials is not in its mission, TJAGSA does not have the resources to provide these publications.

To provide another avenue of availability, some of this material is available through the Defense Technical Information Center (DTIC). An office may obtain this material in two ways. The first is through the installation library. Most libraries are DTIC users and would be happy to identify and order requested

material. If the library is not registered with the DTIC, the requesting person's office/organization may register for the DTIC's services.

If only unclassified information is required, simply call the DTIC Registration Branch and register over the phone at (703) 767-8273, DSN 427-8273. If access to classified information is needed, then a registration form must be obtained, completed, and sent to the Defense Technical Information Center, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, Virginia 22060-6218; telephone (commercial) (703) 767-8273, (DSN) 427-8273, toll-free 1-800-225-DTIC, menu selection 2, option 1; fax (commercial) (703) 767-8228; fax (DSN) 426-8228; or e-mail to reghelp@dtic.mil.

If there is a recurring need for information on a particular subject, the requesting person may want to subscribe to the Current Awareness Bibliography (CAB) Service. The CAB is a profile-based product, which will alert the requestor, on a biweekly basis, to the documents that have been entered into the Technical Reports Database which meet his profile parameters. This bibliography is available electronically via e-mail at

no cost or in hard copy at an annual cost of \$25 per profile. Contact DTIC at (703) 767-9052, (DSN) 427-9052 or www.dtic.mil/dtic/current.html.

Prices for the reports fall into one of the following four categories, depending on the number of pages: \$7, \$12, \$42, and \$122. The Defense Technical Information Center also supplies reports in electronic formats. Prices may be subject to change at any time. Lawyers, however, who need specific documents for a case may obtain them at no cost.

For the products and services requested, one may pay either by establishing a DTIC deposit account with the National Technical Information Service (NTIS) or by using a VISA, MasterCard, or American Express credit card. Information on establishing an NTIS credit card will be included in the user packet.

There is also a DTIC Home Page at <http://www.dtic.mil> to browse through the listing of citations to unclassified/unlimited documents that have been entered into the Technical Reports Database within the last twenty-five years to get a better idea of the type of information that is available. The complete collection includes limited and classified documents as well, but those are not available on the web.

Those who wish to receive more information about the DTIC or have any questions should call the Product and Services Branch at (703)767-8267, (DSN) 427-8267, or toll-free 1-800-225-DTIC, menu selection 6, option 1; or send an e-mail to bcorders@dtic.mil.

Contract Law

- AD A392560 148th Contract Attorneys Deskbook, JA 501, Vol. I, Apr/May 2001.
- AD A392561 148th Contract Attorneys Contract Deskbook, JA 501, Vol. II, Apr/May 2001.
- AD A38746 58th Fiscal Law Course Deskbook, JA 506-2002.

Legal Assistance

- AD A384333 Soldiers' and Sailors' Civil Relief Act Guide, JA 260-2000.
- AD A326002 Wills Guide, JA 262-1997.
- AD A346757 Family Law Guide, JA 263-1998.
- AD A384376 Consumer Law Guide, JA 265-2000.
- AD A372624 Uniformed Services Worldwide Legal Assistance & Reserve Component Directory, JA 267-1999.

- *AD A400000 Tax Information Series, JA 269-2002.
- AD A350513 The Uniformed Services Employment and Reemployment Rights Act (USAERRA), JA 270, Vol. I, 1998.
- AD A350514 The Uniformed Services Employment and Reemployment Rights Act (USAERRA), JA 270, Vol. II, 1998.
- AD A329216 Legal Assistance Office Administration Guide, JA 271-1997.
- AD A276984 Deployment Guide, JA 272-1994.
- AD A360704 Uniformed Services Former Spouses' Protection Act Guide, JA 274-1999.
- AD A392496 Tax Assistance Program Management Guide, JA 275-2001.

Administrative and Civil Law

- AD A380147 Defensive Federal Litigation, JA 200-2000.
- AD A327379 Military Personnel Law, JA 215-1997.
- AD A255346 Reports of Survey and Line of Duty Determinations, JA 231-1992.
- AD A397153 Environmental Law Deskbook, JA 234-2002.
- AD A377491 Government Information Practices, JA 235-2000.
- AD A377563 Federal Tort Claims Act, JA 241-2000.
- AD A332865 AR 15-6 Investigations, JA 281-1998.

Labor Law

- AD A350510 Law of Federal Employment, JA 210-2000.
- **AD A399975 The Law of Federal Labor-Management Relations, JA 211-2001.

Legal Research and Communications

- AD A394124 Military Citation, Seventh Edition, JAGS-ADL-P, 2001.

Criminal Law

AD A302672	Unauthorized Absences Programmed Text, JA 301-1995.
AD A303842	Trial Counsel and Defense Counsel Handbook, JA 310-1995.
AD A302445	Nonjudicial Punishment, JA 330-1995.
AD A302674	Crimes and Defenses Deskbook, JA 337-1994.
AD A274413	United States Attorney Prosecutions, JA 338-1993.

International and Operational Law

**AD A400114	Operational Law Handbook, JA 422-2002.
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Reserve Affairs

AD A345797	Reserve Component JAGC Personnel Policies Handbook, JAGS-GRA-1998.
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The following United States Army Criminal Investigation Division Command publication is also available through the DTIC:

AD A145966	Criminal Investigations, Violation of the U.S.C. in Economic Crime Investigations, USACIDC Pam 195-8.
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* Indicates new publication or revised edition.

** Indicates that a revised edition of this publication has been mailed to DTIC.

3. Regulations and Pamphlets

a. The following provides information on how to obtain Manuals for Courts-Martial, DA Pamphlets, Army Regulations, Field Manuals, and Training Circulars.

(1) The United States Army Publications Distribution Center (USAPDC) at St. Louis, Missouri, stocks and distributes Department of the Army publications and blank forms that have Army-wide use. Contact the USAPDC at the following address:

Commander
U.S. Army Publications
Distribution Center
1655 Woodson Road
St. Louis, MO 63114-6181
Telephone (314) 263-7305, ext. 268

(2) Units must have publications accounts to use any part of the publications distribution system. The following extract from *Department of the Army Regulation 25-30, The Army Integrated Publishing and Printing Program*, paragraph 12-7c (28 February 1989), is provided to assist Active, Reserve, and National Guard units.

b. The units below are authorized [to have] publications accounts with the USAPDC.

(1) *Active Army.*

(a) *Units organized under a Personnel and Administrative Center (PAC).* A PAC that supports battalion-size units will request a consolidated publications account for the entire battalion except when subordinate units in the battalion are geographically remote. To establish an account, the PAC will forward a DA Form 12-R (Request for Establishment of a Publications Account) and supporting DA 12-series forms through their Deputy Chief of Staff for Information Management (DCSIM) or DOIM (Director of Information Management), as appropriate, to the St. Louis USAPDC, 1655 Woodson Road, St. Louis, MO 63114-6181. The PAC will manage all accounts established for the battalion it supports. (Instructions for the use of DA 12-series forms and a reproducible copy of the forms appear in *DA Pam 25-33, The Standard Army Publications (STARPUBS) Revision of the DA 12-Series Forms, Usage and Procedures (1 June 1988)*.)

(b) *Units not organized under a PAC.* Units that are detachment size and above may have a publications account. To establish an account, these units will submit a DA Form 12-R and supporting DA Form 12-99 forms through their DCSIM or DOIM, as appropriate, to the St. Louis USAPDC, 1655 Woodson Road, St. Louis, MO 63114-6181.

(c) *Staff sections of Field Operating Agencies (FOAs), Major Commands (MACOMs), installations, and combat divisions.* These staff sections may establish a single account for each major staff element. To establish an account, these units will follow the procedure in (b) above.

(2) *Army Reserve National Guard (ARNG) units that are company size to State adjutants general.* To establish an account, these units will submit a DA Form 12-R and supporting DA Form 12-99 forms through their State adjutants general to the St. Louis USAPDC, 1655 Woodson Road, St. Louis, MO 63114-6181.

(3) *United States Army Reserve (USAR) units that are company size and above and staff sections from division level and above.* To establish an account, these units will submit a DA Form 12-R and supporting DA Form 12-99 forms through their supporting installation and CONUSA to the St. Louis USAPDC, 1655 Woodson Road, St. Louis, MO 63114-6181.

(4) *Reserve Officer Training Corps (ROTC) Elements.* To establish an account, ROTC regions will submit a DA Form

12-R and supporting DA Form 12-99 forms through their supporting installation and Training and Doctrine Command (TRADOC) DCSIM to the St. Louis USAPDC, 1655 Woodson Road, St. Louis, MO 63114-6181. Senior and junior ROTC units will submit a DA Form 12-R and supporting DA 12-series forms through their supporting installation, regional headquarters, and TRADOC DCSIM to the St. Louis USAPDC, 1655 Woodson Road, St. Louis, MO 63114-6181.

Units not described above also may be authorized accounts. To establish accounts, these units must send their requests through their DCSIM or DOIM, as appropriate, to Commander, USAPPC, ATTN: ASQZ-LM, Alexandria, VA 22331-0302.

c. Specific instructions for establishing initial distribution requirements appear in *DA Pam 25-33*.

If your unit does not have a copy of *DA Pam 25-33*, you may request one by calling the St. Louis USAPDC at (314) 263-7305, extension 268.

(1) Units that have established initial distribution requirements will receive copies of new, revised, and changed publications as soon as they are printed.

(2) Units that require publications that are not on their initial distribution list can requisition publications using the Defense Data Network (DDN), the Telephone Order Publications System (TOPS), or the World Wide Web (WWW).

(3) Civilians can obtain DA Pams through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. You may reach this office at (703) 487-4684 or 1-800-553-6487.

(4) Air Force, Navy, and Marine Corps judge advocates can request up to ten copies of DA Pamphlets by writing to USAPDC, 1655 Woodson Road, St. Louis, MO 63114-6181.

4. The Legal Automation Army-Wide Systems XXI—JAGCNet

a. The Legal Automation Army-Wide Systems XXI (LAAWS XXI) operates a knowledge management and information service called JAGCNet primarily dedicated to servicing the Army legal community, but also provides for Department of Defense (DOD) access in some case. Whether you have Army access or DOD-wide access, all users will be able to download the TJAGSA publications that are available through the JAGCNet.

b. Access to the JAGCNet:

(1) Access to JAGCNet is restricted to registered users who have been approved by the LAAWS XXI Office and senior OT-JAG staff:

(a) Active U.S. Army JAG Corps personnel;

(b) Reserve and National Guard U.S. Army JAG Corps personnel;

(c) Civilian employees (U.S. Army) JAG Corps personnel;

(d) FLEP students;

(e) Affiliated (that is, U.S. Navy, U.S. Marine Corps, U.S. Air Force, U.S. Coast Guard) DOD personnel assigned to a branch of the JAG Corps; and, other personnel within the DOD legal community.

(2) Requests for exceptions to the access policy should be e-mailed to:

LAAWSXXI@jagc-smtp.army.mil

c. How to logon to JAGCNet:

(a) Using a Web browser (Internet Explorer 4.0 or higher recommended) go to the following site: <http://jagcnet.army.mil>.

(b) Follow the link that reads “Enter JAGCNet.”

(c) If you already have a JAGCNet account, and know your user name and password, select “Enter” from the next menu, then enter your “User Name” and “password” in the appropriate fields.

(d) If you have a JAGCNet account, *but do not know your user name and/or Internet password*, contact your legal administrator or e-mail the LAAWS XXI HelpDesk at LAAWSXXI@jagc-smtp.army.mil.

(e) If you do not have a JAGCNet account, select “Register” from the JAGCNet Intranet menu.

(f) Follow the link “Request a New Account” at the bottom of the page, and fill out the registration form completely. Allow seventy-two hours for your request to process. Once your request is processed, you will receive an e-mail telling you that your request has been approved or denied.

(g) Once granted access to JAGCNet, follow step (c), above.

5. TJAGSA Publications Available Through the LAAWS XXI JAGCNet

The following is a current list of TJAGSA publications available in various file formats for downloading from the LAAWS XXI JAGCNet at www.jagcnet.army.mil. These publications are available also on the LAAWS XXI CD-ROM set in PDF, only.

<u>FILE NAME</u>	<u>UPLOADED</u>	<u>DESCRIPTION</u>			
			JA 270	August 2000	The Uniformed Services Employment and Reemployment Rights Act Guide, June 1998.
JA 200	August 2000	Defensive Federal Litigation, January 2000.	JA 271	August 2000	Legal Assistance Office Administration Guide, August 1997.
JA 210	October 2000	Law of Federal Employment, September 2000.	JA 275	July 2001	Tax Assistance Program Management Guide, June 2001.
JA 211	August 2001	The Law of Federal Labor-Management Relations, August 2001.	JA 280	March 2001	Administrative & Civil Law Basic Course Deskbook, (Vols. I & II), March 2001.
JA 215	August 2000	Military Personnel Law, June 1997.	JA 281	August 2000	AR 15-6 Investigations, December 1998.
JA 221	August 2000	Law of Military Installations Deskbook, September 1996.	JA 301	May 2000	Unauthorized Absences, August 1995.
JA 230	August 2000	Morale, Welfare, Recreation Operations, January 1996.	JA 330	October 2000	Nonjudicial Punishment Programmed Text, August 1995.
JA 231	August 2000	Reports of Survey and Line of Duty Determinations Guide, September 1992.	JA 337	May 2000	Crimes and Defenses Deskbook, July 1994.
JA 234	August 2001	Environmental Law Deskbook, August 2001.	JA 422	January 2002	Operational Law Handbook 2002.
JA 235	May 2000	Government Information Practices, March 2000.	JA 501	August 2001	146th Contract Attorneys Course Deskbook, Vols. I & II, July/Aug. 2001.
JA 241	October 2000	Federal Tort Claims Act, May 2000.	JA 506	March 2001	62nd & 63rd Fiscal Law Course Deskbook, March 2002.
JA 250	September 2000	Readings in Hospital Law, May 1998.			
JA 260	August 2000	Soldiers' and Sailors' Civil Relief Act Guide, July 2000.			
JA 263	August 2000	Family Law Guide, May 1998.			
JA 265	October 2000	Consumer Law Guides, September 2000.			
JA 267	May 2000	Uniformed Services Worldwide Legal Assistance and Reserve Components Office Directory, November 1999.			
JA 269	January 2002	Tax Information Series, January 2002.			

6. TJAGSA Legal Technology Management Office (LTMO)

The Judge Advocate General's School, United States Army (TJAGSA), continues to improve capabilities for faculty and staff. We have installed new computers throughout the School, all of which are compatible with Microsoft Windows 2000 Professional and Microsoft Office 2000 Professional throughout the School.

The TJAGSA faculty and staff are available through the Internet. Addresses for TJAGSA personnel are available by e-mail at jagsch@hqda.army.mil or by calling the LTMO at (434) 972-6314. Phone numbers and e-mail addresses for TJAGSA personnel are available on TJAGSA Web page at <http://www.jagcnet.army.mil/tjagsa>. Click on "directory" for the listings.

For students who wish to access their office e-mail while attending TJAGSA classes, please ensure that your office e-mail is web browser accessible prior to departing your office. Please bring the address with you when attending classes at TJAGSA. If your office does not have web accessible e-mail, you may establish an account at the Army Portal, <http://ako.us.army.mil>, and then forward your office e-mail to this new account during your stay at the School. Dial-up internet access is available in the TJAGSA billets.

Personnel desiring to call TJAGSA can dial via DSN 934-7115 or, provided the telephone call is for official business only, use our toll free number, (800) 552-3978; the receptionist will connect you with the appropriate department or directorate. For additional information, please contact our Legal Technology Management Office at (434) 972-6264. CW3 Tommy Worthey.

7. The Army Law Library Service

Per *Army Regulation 27-1*, paragraph 12-11, the Army Law Library Service (ALLS) must be notified before any redistribution of ALLS-purchased law library materials. Posting such a notification in the ALLS FORUM of JAGCNet satisfies this regulatory requirement as well as alerting other librarians that excess materials are available.

Point of contact is Mr. Dan Lavering, The Judge Advocate General's School, United States Army, ATTN: JAGS-ADL-L, 600 Massie Road, Charlottesville, Virginia 22903-1781. Telephone DSN: 488-6306, commercial: (434) 972-6306, or e-mail at Daniel.Lavering@hqda.army.mil.

8. Visual Information Library Bulletin

This bulletin contains a listing of educational television programs maintained in the Visual Information Library of the Judge Advocate General's School, United States Army. The listing consists of video recordings of actual classroom instruction presented at the School and video productions.

The library is set up to support the continuing legal education mission of the School. Tapes are intended for use by U. S. Army judge advocates and Department of the Army attorneys. They are not appropriate for general education or training and should not be used outside a legal office.

Local reproduction of these tapes is prohibited without prior written permission from The Judge Advocate General's School.

The programs listed in this bulletin are available through a tape duplication service. TAPES ARE NOT PROVIDED ON LOAN. Tapes must be requested by title and number and accompanied by a sufficient number of blank tapes. Programs can be reproduced onto 1/2-inch VHS videocassettes. All tapes are dubbed in the standard-play mode only. The length of time

listed on the VHS tape is the amount of dubbing time available. (i.e. a T120 VHS tape allows for 120 minutes of taping).

NOTE: The service of duplicating program audio sound tracks to audiocassette tape is no longer offered.

Request and blank tapes should be mailed to:

The Judge Advocate General's School
U.S. Army
ATTN: Visual Information Branch (JAGS-ADE-V)
600 Massie Road
Charlottesville, VA 22903-1781

Telephone (434) 972-6317
Autovon (488-7115) and ask for extension 317

JA-277-1A & 2A

Advice to Future Staff Judge Advocates, Parts I & II (5th Annual Charles L. Decker Lecture)

DATE: March 1981

LENGTH: 50:00/21:00

SPEAKER: Major General (Retired) Lawrence H. Williams.

SYNOPSIS: MG Williams, a former TAJAG, provides unique and practical perspectives on the art and science of practices as a Staff Judge Advocate.

JA-94-0058A

Practice Before the Office Of Special Counsel, Parts I & II (45th Federal Labor Relations Course)

DATE: 25 May 1994

LENGTH: 42:00/31:45

SPEAKER: Mr. James A. Kahl, Deputy Special Counsel; Office of Special Counsel.

SYNOPSIS: Overview of the organization and responsibilities of the various divisions of the Office of Special Counsel. Includes a review of reauthorization legislation, recent case highlights, and future responsibilities of OSC.

JA-94-0059A

Labor-Management Partnership in Government, Parts I & II (45th Federal Labor Relations Course)

DATE: 26 May 1994

LENGTH: 53:30/47:30

SPEAKER: Mr. David L. Feder, Deputy General Counsel; Federal Labor Relations Authority.

SYNOPSIS: Discussion of the President's policy of greater labor-management cooperation in Federal agencies. Also includes FLRA position on various disputes, insights into the operation of the National Performance Review Council, and summaries of recent cases of interest.

JA-95-0048A***Role of the Leader as Visionary for Organizational Change, The (1st Hugh J. Clausen Lecture on Leadership)***

DATE: 22 February 1995

LENGTH: 56:00

SPEAKER: BG Dulaney L. O' Roark, Jr. U.S. Army (Ret).

SYNOPSIS: General O'Roark speaks on the developing role of the leader as a visionary for organizational change. He acknowledges "intuitive leadership" and "leadership by example" as effective senior leadership qualities that served the needs of the Judge Advocate General Corps in the past. He predicts that the future will offer different challenges that will require a new approach to senior-level leadership. The approach he proposes is "transformational leadership." Transformational leadership, he says, will produce significant changes in our current practice of military law and will compel us to adopt, apply, and maintain pace with technology.

JA-95-0055A***Advanced Separation Agreements, Parts I & II (36th Legal Assistance Course)***

DATE: 02 March 1995

LENGTH: 44:50/45:00

SPEAKER: LTC (P) Mark Sullivan, IMA, Instructor, Administrative and Civil Law Division, TJAGSA.

SYNOPSIS: Class presented to the 36th Legal Assistance Course discussing strategies in negotiating separation agreements. Instruction also covered complex property division.

JA-95-0086A***Introduction to Federal Labor-Management Relations (47th Federal Labor Relations Course)***

DATE: 22 May 1995

LENGTH: 47:28

SPEAKER: LTC Allan Pearson, Professor, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: This presentation discusses the federal labor-management relations program and the role of labor organizations in the civil service system.

JA-95-0087A***Representation Process, Parts I & II (47th Federal Labor Relations Course)***

DATE: 22 May 1995

LENGTH: 49:00/48:30

SPEAKER: LTC Allan Pearson, Professor, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: This block describes how labor organizations organize employees compel election procedures for union representation.

JA-95-0088A***Scope of Bargaining and Impasse Resolution, Parts I & II (47th Federal Labor Relations Course)***

DATE: 23 May 1995

LENGTH: 46:00/55:00

SPEAKER: LTC Allan Pearson, Professor, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: These hours cover the principles governing collective bargaining negotiations and recurrent issues in those negotiations. It includes major negotiability decisions and the method of analyzing the negotiability of collective bargaining proposals.

JA-95-0089A***Unfair Labor Practices, Parts I & II (47th Federal Labor Relations Course)***

DATE: 23 May 1995

LENGTH: 38:05/50:00

SPEAKER: LTC Allan Pearson, Professor, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: This presentation covers major issues in federal unfair labor practice cases and the procedural processing of unfair labor practice complaints.

JA-95-0090A***Negotiating Grievance Procedures and Arbitration (47th Federal Labor Relations Course)***

DATE: 23 May 1995

LENGTH: 46:00

SPEAKER: LTC Allan Pearson, Professor, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: The instructor in this block focuses on negotiated grievance procedures and arbitration in federal civil service. It includes the Federal Labor Relations Authority's review of arbitration decisions and how management responds to and prepares for grievance/arbitration.

JA-95-0091A

Practice Before the Federal Labor Relations Authority: The Arbitrator's Perspective, Parts I & II (47th Federal Labor Relations Course)

DATE: 23 May 1995

LENGTH: 46:20/49:30

SPEAKER: Dr. E. William Hockenberry, Arbitrator and Professor of Law.

SYNOPSIS: This presentation addresses the federal grievance process from the perspective of the arbitrator. It provides an overview of the arbitration process and practice tips.

JA-95-0094A

Prohibited Personnel Practices and Merit Principles, Parts I & II (47th Federal Labor Relations Course)

DATE: 25 May 1995

LENGTH: 50:00/46:00

SPEAKER: MAJ Charles HERNICZ, Professor, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: This block highlights the role of the Special Counsel in investigating and correcting prohibited personnel practices and disciplining officials who commit such practices. It includes issues under the Whistleblower Protection Act of 1989, particularly the stay and individual right of action provisions.

JA-96-0011A

Soldier's and Sailor's Civil Relief Act, Parts I, II (37th Legal Assistance Course)

DATE: 16 October 1995

LENGTH: 47:00/45:27

SPEAKER: MAJ Howard McGillin, Professor, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: The speaker presents an overview of the SSCRA. The class discusses eligibility for the acts' protection, the 6% loan provision, stays of judicial proceedings, default judgments and the statute of limitations.

JA-96-0012A

Involuntary Allotments (37th Legal Assistance Course)

DATE: 16 October 1995

LENGTH: 47:00

SPEAKER: MAJ Howard McGillin, Professor, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: Speaker discusses implementation of involuntary allotments against soldiers for creditor judgments. The class covers post-judgment remedies including garnishment and involuntary allotments.

JA-96-0029A

Negotiating Skills for Judge Advocates

DATE: 16 February 1996

LENGTH: 40:30

SPEAKER: COL Mark Sullivan, IMA Instructor, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: Colonel Sullivan, a Board-Certified Specialist in Family Law and a Fellow of the American Academy of Matrimonial Lawyers, covers the essential aspects of negotiating for fellow judge advocates in family law, legal assistance, claims, procurement and military-justice. No other tape represents such a unique overview of the skills and services performed by the military lawyer in his or her daily duties.

JA-96-0031A

Introduction to Alternative Dispute Resolution (38th Legal Assistance Course)

DATE: 29 February 1996

LENGTH: 43:00

SPEAKER: LTC Urs Gsteiger, IMA Instructor, Administrative and Civil Law Division, TJAGSA.

SYNOPSIS: Class presented at the 38th Legal Assistance Course covering the forms of alternative dispute resolution (ADR) including negotiation, conciliation, mediation and arbitration. Instruction included discussion of the various forms of mediation, conducting effective mediation, and the principles of human behavior that must be recognized and dealt with to succeed at mediation.

JA-97-0026A

Mobilization Legal Assistance Issues (3rd Reserve Component General Officers Legal Assistance Course)

DATE: 22 January 1997

LENGTH: 48:30

SPEAKER: MAJ Paul Conrad, Professor, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: Major Conrad discusses mobilization legal assistance issues, including the Ready Reserve Mobilization Income Insurance Program, Command Legal Assistance Mobilization Planning, the Army Legal Assistance Program Policy for reserve access to services, Reserve Senior Commander responsibilities regarding legal assistance, and a brief overview of the Soldiers' and Sailors' Civil Relief Act.

JA-97-0027A

Uniformed Services Employment and Reemployment Rights (3rd Reserve Component General Officers Legal Assistance Course)

DATE: 23 January 1997

LENGTH: 48:30

SPEAKER: MAJ Paul Conrad, Professor, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: Major Conrad discusses the Uniformed Services Employment and Reemployment Act (USERRA), including prerequisites to coverage under the Act, protections provided under the Act, and how the Act is enforced.

JA-98-0003A

Overview of Federal Ethics

DATE: October 1997

LENGTH: 31:30

SPEAKERS: MAJ Herb Ford, Professor, Administrative and Civil Law, TJAGSA and COL Raymond C. Ruppert, Chief, Standards of Conduct Office, Office of the Judge Advocate General, Department of the Army, Washington, D.C.

SYNOPSIS: The speakers discuss the role and responsibilities of ethics counselors, including authority and appointments, opinion writing and resources.

JA-98-0010A

Post-Employment Restrictions and Procurement Integrity (4th Ethics Counselors Workshop)

DATE: 16 October 1997

LENGTH: 46:40

SPEAKERS: MAJ Kathryn Sommerkamp, Professor, Contract Law, TJAGSA and Mr. Alfred H. Novotne, Standards of Conduct Office, Office of the Judge Advocate General, Department of the Army, Washington, D.C.

SYNOPSIS: The speakers discuss job hunting and post-government employment restriction rules and ethics rules unique to the procurement process, with emphasis on office counseling and opinion writing.

JA-98-0011A

Use of Government Resources, Parts I & II (4th Ethics Counselors Workshop)

DATE: 16 October 1997

LENGTH: 43:30/46:00

SPEAKER: Mr. E. Scott Castle, Senior Assistant to The General Counsel, Office of General Counsel, Department of the Army, Washington, D.C.

SYNOPSIS: Mr. Castle discusses the relationship between the principles of Federal appropriations law and Federal ethics rules relative to the use of government resources, including equipment, personnel, and support to non-Federal entities.

JA-98-0013A

Survivor Benefits, Parts I & II (41st Legal Assistance Course)

DATE: 21 October 1997

LENGTH: 51:00/47:30

SPEAKER: LTC Mark E. Henderson, Professor, Legal Assistance Branch, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: The student will understand the major government programs offering benefits to the survivors of active duty and retired military personnel. Benefits covered include the Survivor Benefit Plan, Social Security, Dependency and Indemnity Compensation, and other DoD and Department of Veterans Affairs programs. The student will also understand how the Army Casualty Assistance System provides personal assistance to the Primary Next of Kin (PNOK).

JA-98-0014A

Real Estate Listing Agreements, Parts I & II (41st Legal Assistance Course)

DATE: 24 October 1997

LENGTH: 51:30/43:30

SPEAKER: LTC Urs Gsteiger.

SYNOPSIS: LTC Gsteiger addresses the major issues and documents involved in selling individually owned real property. He gives practical solutions to problems legal assistance practitioners might face.

JA-98-0050A

Overview: Federal Income Tax (42nd Legal Assistance Course)

DATE: 23 February 1998

LENGTH: 50:30

SPEAKER: LTC Mark E. Henderson, Professor, Legal Assistance Branch, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: The student will understand the basic structure of the federal income tax system and recent changes to the Code affecting military taxpayers. The student will also understand current tax issues.

JA-99-0023A

Handling Sexual Harassment Complaints (23rd Administrative Law for Military Installations Course)

DATE: 8 February 1999

LENGTH: 45:00

SPEAKER: MAJ Harold McCracken, Professor, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: The student will learn to distinguish the different definitions of sexual harassment used in the federal sector, including Title VII, DoD and 10 USC 1561. The student will learn how to use the existing EO and EEO complaint processes to investigate sexual harassment allegations brought by military and civilian complainants.

JA-99-0025A

Private Organizations (23rd Administrative Law for Military Installations Course)

DATE: 10 February 1999

LENGTH: 17:00

SPEAKER: MAJ Herb Ford, Professor, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: Instruction on private organizations operating on DoD installations, including authorized support, administrative requirements, and command responsibilities.

JA-99-0026A

Army Enlisted Separations (23rd Administrative Law for Military Installations Course)

DATE: 10 February 1999

LENGTH: 68:07

SPEAKER: MAJ Walter Hudson.

SYNOPSIS: The student will understand the regulations and statutes applicable to Army enlisted separations.

JA-99-0036A

Ethics Counselors Fundamentals: Walk Through the Joint Ethics Regulation (1st Basics for Ethics Counselors Workshop)

DATE: 12 April 1999

LENGTH: 48:00

SPEAKER: Mr. Alfred H. Novotne, Standards of Conduct Office, Office of the Judge Advocate General, DA; Washington, D.C.

SYNOPSIS: Mr. Novotne provides the viewer with an overview of the Joint Ethics Regulation and the principles that underlie the Government Standards of Conduct.

JA-99-0039A

Post Employment Restrictions and Procurement Integrity (1st Basics for Ethics Counselors Workshop)

DATE: 15 April 1999

LENGTH: 89:00

SPEAKER: MAJ Mary Harney, USAF, Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: The student will understand and apply the job hunting and post-government employment restriction rules and ethics rules unique to the procurement process. Office counseling and opinion writing will be emphasized.

JA-99-0054A

Professional Responsibility: A Philosophy of Lawyering, Parts I, II & III

NOTE: THIS PROGRAM IS FOR USE BY ARMY PERSONNEL ONLY.

DATE: 27 September 1999

LENGTH: 56:00/48:00/49:00

SPEAKER: Major Norman F. Allen, Criminal Law Department, TJAGSA and Major Maurice A. Lescault, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: The instructors discuss the value of developing a personal philosophy of lawyering to help resolve the difficult ethical issues that can arise under the Rules of Professional Conduct. They go on to propose several factors that such a philosophy might contain and how these factors are reflected in the current rules. The instructors also use case examples to demonstrate how these principles apply to the everyday practice of judge advocates. Included is an update on several areas of professional responsibility and a seminar format hour for use in training.

JA-00-0006A

Issues in Will Drafting (45th Legal Assistance Course)

DATE: 18 October 1999

LENGTH: 85:18

SPEAKER: Major Curtis A. Parker; Deputy Chief, Legal Assistance Policy Division, Office of the Judge Advocate General, U.S. Army.

SYNOPSIS: Current issues arising in the drafting of wills. Included in the discussion will be some review of the basics of will drafting, important clauses that must be considered for inclusion in every will, common legal issues that can be avoided by careful drafting, and the formalities of execution.

JA-00-0007A

Introduction: Use of Trust in Estate Planning (45th Legal Assistance Course)

DATE: 18 October 1999

LENGTH: 51:40

SPEAKER: LTC Robert R. Church, U.S. Army Reserve, Individual Mobilization Augmentee, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: Current issues arising in the drafting of wills. Included in the discussion will be some review of the basics of will drafting, important clauses that must be considered for inclusion in every will, common legal issues that can be avoided by careful drafting, and the formalities of execution.

JA-00-0008A

Trust Drafting, Parts I & II (45th Legal Assistance Course)

DATE: 21 October 1999

LENGTH: 52:00/48:30

SPEAKER: LTC Robert R. Church, U.S. Army Reserve, Individual Mobilization Augmentee, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: The student will become familiar with drafting a number of the trusts commonly used in estate planning; including contingent trusts for minors, the living trust, and the Internal Revenue Code Section 2503 trust. Specific trust provisions and the estate tax implications of the trusts will be discussed.

JA-00-0009A

Fiscal Law for AGR Attorneys (1999 USAR AGR JAG Conference)

DATE: 27 October 1999

LENGTH: 50:44

SPEAKER: Major Elizabeth D. Berrigan, Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: This class will focus on a variety of current fiscal law issues relevant to the both Army Reserve Component and the National Guard. Emphasis is on new decisions of the General Accounting Office; advisory opinions of the Office of General Counsel, Department of the Army; and regulatory guidance on various fiscal issues.

JA-00-0010A

Freedom of Information and Privacy Act Fundamentals for AGR Attorneys (1999 USAR AGR JAG Conference)

DATE: 27 October 1999

LENGTH: 54:12

SPEAKER: Major Corey L. Bradley, Professor, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: The student will review the fundamental principles of the Freedom of Information Act and Privacy Act. Instruction captures changes in the law and regulations resulting from recent amendments to the FOIA. The lecture focuses on the FOIA and PA issues often confronted by Reserve Judge Advocates.

JA-00-0014A

The United States Office of Personnel Management in the New Millennium (20th Charles L. Decker Lecture in Administrative and Civil Law)

DATE: 17 November 1999

LENGTH: 56:40

SPEAKER: Honorable Janice R. Lachance, Director, U.S. Office of Personnel Management.

SYNOPSIS: Ms. LaChance spoke about her vision of the federal workforce in the 21st Century. She spoke about the changes to the federal work place, which will occur as a result of technological advances, and highlighted the need for employees to be well versed in a variety of subjects and no longer specialists in just one area. She also discussed the challenges for employees and managers in evaluating and rating performance as a result of these changes. She presented OPM's initiatives for managing the federal workforce to keep pace with the changes in the workforce and the workplace.

JA-01-0009A

Arbitration and Environmental Differential Pay (54th Federal Labor Relations Course)

DATE: 30 November 2000

LENGTH: 87:12

SPEAKER: Major Douglas B. Cox, USAF, Trial Attorney, Employment Litigation Branch, Air Force Legal Services Agency; Arlington, Virginia.

SYNOPSIS: A two-hour introduction to the requirements for paying environmental differential pay (EDP) to wage grade employees, especially where it is based on exposure to asbestos, and practical tips for representing a federal agency in an arbitration proceeding involving EDP issues.

JA-01-0021A

Gifts, Parts I & II (3rd Basics for Ethics Counselors Workshop)

DATE: 09 April 2001

LENGTH: 45:11/49:41

SPEAKER: Mr. David W. LaCroix, Assistant to the General Counsel; Department of the Navy.

SYNOPSIS: Mr. LaCroix discusses the standards of conduct rules on gifts from outside sources, from foreign governments and between employees.

JA-01-0022A

Travel Related Gifts (3rd Basics for Ethics Counselors Workshop)

DATE: 09 April 2001

LENGTH: 41:48

SPEAKER: Mr. Mark F. Stone, AFMC Law Office; Wright-Patterson Air Force Base, Ohio.

SYNOPSIS: The speaker discusses the ethics rules and regulations governing the acceptance of gifts related to travel, with emphasis on frequent flyer miles and other travel gratuities.

JA-01-0023A

Outside Activities, Parts I & II (3rd Basics for Ethics Counselors Workshop)

DATE: 09 April 2001

LENGTH: 52:12/35:22

SPEAKER: LCDR Vida M. Antolin-Jenkins; Head, Standards of Conduct and Government Ethics Branch, Office of the Judge Advocate General, U.S. Navy.

SYNOPSIS: The speaker discusses the rules related to outside employment and outside activities of Federal Employees and their family members.

JA-01-0024A

Conflicts of Interest, Parts I & II (3rd Basics for Ethics Counselors Workshop)

DATE: 10 April 2001

LENGTH: 51:00/35:48

SPEAKER: CPT. Eric M. Lyon, Special Assistant to the Counsel for the Commandant, U.S. Marine Corps.

SYNOPSIS: CPT. Lyon presents a class on how to analyze financial conflicts of interest and how to resolve them and what other outside activities may conflict with conscientious duty performance.

JA-01-0025A

Financial Disclosure (3rd Basics for Ethics Counselors Workshop)

DATE: 10 April 2001

LENGTH: 40:00

SPEAKER: Ms. Gail D. Mason, Senior Attorney, Standards of Conduct Office; Office of the General Counsel, Department of Defense.

SYNOPSIS: The speaker presents a class on proper compilation of financial disclosure reports (SF 278 and SF 450) and ethics counselors review responsibilities.

JA-01-0026A

Fiscal Aspects of Ethics (3rd Basics for Ethics Counselors Workshop)

DATE: 10 April 2001

LENGTH: 45:00

SPEAKER: Mr. Don W. Fox, Deputy General Counsel, U.S. Air Force.

SYNOPSIS: The speaker discusses the correlation between fiscal law principles and the JER.

JA-01-0028A

Private Organizations: Relations with Non-Federal Entities (3rd Basics for Ethics Counselors Workshop)

DATE: 10 April 2001

LENGTH: 56:00

SPEAKER: LTC Sandra B. Stockel, Assistant to the General Counsel, Office of the General Counsel, Ethics and Fiscal Law.

SYNOPSIS: The speaker discusses the rules governing official and personal relationships with non-Federal entities (private organizations), including membership, management, endorsement, and fundraising.

JA-01-0029A

Fundraising (3rd Basics for Ethics Counselors Workshop)

DATE: 10 April 2001

LENGTH: 53:38

SPEAKER: LTC Sandra B. Stockel, Assistant to the General Counsel, Office of the General Counsel, Ethics and Fiscal Law.

SYNOPSIS: The speaker discusses the rules and prohibitions related to fundraising on the military installation and by military members.

JA-01-0030A

Government Travel and Transportation (3rd Basics for Ethics Counselors Workshop)

DATE: 11 April 2001

LENGTH: 79:43

SPEAKER: LTC Lisa Anderson-Lloyd, Assistant to the General Counsel, Office of the General Counsel, U.S. Army.

SYNOPSIS: The speaker discusses selected travel and transportation rules, with emphasis on the proper use of official transportation resources to include vehicles and aircraft.

JA-01-0031A

Advanced Financial Disclosure (3rd Basics for Ethics Counselors Workshop)

DATE: 11 April 2001

LENGTH: 81:47

SPEAKER: Ms. Gail D. Mason, Senior Attorney, Standards of Conduct Office; Office of the General Counsel, Department of Defense.

SYNOPSIS: The speaker discusses advanced issues related to the proper compilation of financial disclosure reports (SF 278 and SF 450) and ethics counselors review responsibilities.

JA-01-0033A

Nonappropriated Fund Instrumentalities (3rd Basics for Ethics Counselors Workshop)

DATE: 12 April 2001

LENGTH: 55:45

SPEAKER: Mary L. Hostetter; Counsel, Personal and Family Readiness Division; Headquarters, U.S. Marine Corps, Quantico, VA.

SYNOPSIS: The speaker discusses the correlation between MWR and NAF activities and the JER.

JA-01-0034A

Ethics Aspects of Outsourcing and Privatization (3rd Basics for Ethics Counselors Workshop)

DATE: 12 April 2001

LENGTH: 58:07

SPEAKER: Ms. Mary C. Sullivan, Attorney, Office of the Assistant General Counsel; Research, Development and Acquisition, Department of the Navy.

SYNOPSIS: The speaker discusses the A-76 process and the complex ethics issues that derive from this process.

JA-01-0035A

Walk Through the Joint Ethics Regulation, A (3rd Basics for Ethics Counselors Workshop)

DATE: 12 April 2001

LENGTH: 28:35

SPEAKER: Mr. Alfred H. Novotne; Chief, Standards of Conduct Branch, Standards of Conduct Office, Office of the Judge Advocate General, Washington D.C.

SYNOPSIS: The speaker describes the format and content of the JER.

JA-01-0036A

Program Review (3rd Basic for Ethics Counselors Workshop)

DATE: 13 April 2001

LENGTH: 48:00

SPEAKER: Mr. David W. LaCroix, Assistant to the General Counsel; Department of the Navy.

SYNOPSIS: The speaker discusses the audit process and how to prepare for them.

JA-01-0043A

Automobile Fraud (49th Legal Assistance Course)

DATE: 20 September 2001

LENGTH: 89:06

SPEAKER: Mr. Tom Domonoske, Private Practitioner; Harrisonburg, Virginia.

SYNOPSIS: The speaker presents a summary of the most prevalent deceptive sales techniques in the retail car industry and the consumer laws that legal assistance attorneys can use to combat them.

JA-02-0047A

Introduction to Federal Income Tax (5th Tax Law for Attorneys Course)

DATE: 10 December 2001

LENGTH: 68:30

SPEAKER: LTC Curtis A. Parker, Professor, Legal Assistance Branch, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: The student will understand the basic structure of the federal income tax system, tax return filing requirements, filing status choice, and exemptions. The Student will be able to complete lines 1-6 of the Form 1040.

JA-02-0048A

Gross Income (Basic), (5th Tax Law for Attorneys Course)

DATE: 10 December 2001

LENGTH: 72:20

SPEAKER: LTC Curtis A. Parker, Professor, Legal Assistance Branch, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: The student will understand the tax rules relating to reporting all sources of income, including items of military compensation, interest, dividend, and miscellaneous income. The student will be able to complete Schedule B (Form 1040) and lines 7-22 of the Form 1040.

JA-02-0049A

Adjustments to Income (Basic), (5th Tax Law for Attorneys Course)

DATE: 10 December 2001

LENGTH: 41:50

SPEAKER: MAJ Janet A. Fenton, Deputy Chief, Legal Assistance Policy Division; Office of the Judge Advocate General, U.S. Army.

SYNOPSIS: The student will understand the tax rules relating to common adjustments to income, including student loan interest, medical savings account, moving expenses, and alimony. The student will be able to complete Form 3903, student loan interest deduction worksheet, and lines 24-33 of the Form 1040.

JA-02-0050A

Tax Aspects of Real Property, Parts I & II (5th Tax Law for Attorneys Course)

DATE: 11 December 2001

LENGTH: 54:00/40:38

SPEAKER: LTC Curtis A. Parker, Professor, Legal Assistance Branch, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: The student will understand how the federal income tax rules affect taxpayers who buy and own a home. The student will be able to apply the home mortgage interest rules and the exclusion of gain provisions of the code to common fact situations. The student will also understand the rules relating to holding a home out for rental, to include reporting rental income and claiming rental and depreciation deductions. The student will understand how to complete Schedule E (Form 1040) and Form 4562.

JA-02-0051A

Tax Aspects of Individual Retirement Accounts (5th Tax Law for Attorneys Course)

DATE: 11 December 2001

LENGTH: 43:30

SPEAKER: MAJ Janet A. Fenton, Deputy Chief, Legal Assistance Policy Division; Office of the Judge Advocate General, U.S. Army.

SYNOPSIS: The student will understand the tax rules relating to traditional IRAs, Roth IRAs, and Educational IRAs. The student will be able to complete Form 8606 and lines 15, 16, 23, and 53 of the Form 1040.

JA-02-0052A

Tax Aspects of Stocks and Mutual Funds (5th Tax Law for Attorneys Course)

DATE: 11 December 2001

LENGTH: 39:00

SPEAKER: MAJ Janet A. Fenton, Deputy Chief, Legal Assistance Policy Division; Office of the Judge Advocate General, U.S. Army.

SYNOPSIS: The student will understand the tax rules relating to mutual funds and stocks. The student will be able to complete Schedules B and D (Form 1040) and to report gains and losses on these investments on lines 8, 9, 13, 22, and 40 of the Form 1040.

JA-02-0053A

Deductions and Tax Computation, Parts I & II (5th Tax Law for Attorneys Course)

DATE: 12 December 2001

LENGTH: 49:30/44:30

SPEAKER: LTC Curtis A. Parker, Professor, Legal Assistance Branch, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: The student will understand the tax rules relating to claiming itemized deductions. The student will be able to complete Schedule A (Form 1040), Form 2106, and lines 34-40 of the Form 1040.

JA-02-0054A

Tax Credits (5th Tax Law for Attorneys Course)

DATE: 12 December 2001

LENGTH: 39:00

SPEAKER: MAJ Janet A. Fenton, Deputy Chief, Legal Assistance Policy Division; Office of the Judge Advocate General, U.S. Army.

SYNOPSIS: The student will understand the tax credits available to taxpayers, including the child care credit, earned income credit, child tax credit, education credits, and adoption credit. The student will be able to complete lines 41-49 of the Form 1040.

JA-02-0055A

Tax Payments, Other Taxes, and Finishing the Return (5th Tax Law for Attorneys Course)

DATE: 34:35

LENGTH: 12 December 2001

SPEAKER: MAJ Janet A. Fenton, Deputy Chief, Legal Assistance Policy Division; Office of the Judge Advocate General, U.S. Army.

SYNOPSIS: The student will understand other taxes that can be assessed on taxpayers, such as the self-employment tax, alternative minimum tax, tax on Individual Retirement Arrangements (IRAs), household employment taxes, and the total tax. The student will understand various tax payments that apply to tax returns and completing a tax return. The student will be able to complete lines 50-69 of the Form 1040.

JA-02-0056A

Foreign Tax Issues (5th Tax Law for Attorneys Course)

DATE: 13 December 2001

LENGTH: 30:20

SPEAKER: LTC Curtis A. Parker, Professor, Legal Assistance Branch, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: The student will understand how the tax code affects taxpayers living overseas. The student will understand how to claim the foreign earned income exclusion and the foreign tax credit. The student will be able to complete Form 1040NR, Form 1116, and Form 2555.

JA-02-0057A

Family Childcare Provider Tax Issues (5th Tax Law for Attorneys Course)

DATE: 13 December 2001

LENGTH: 51:00

SPEAKER: LTC Curtis A. Parker, Professor, Legal Assistance Branch, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: The student will understand the tax rules and issues relating to military family childcare providers. The student will be able to complete related tax forms.

JA-02-0058A

Sale of Rental Property (5th Tax Law for Attorneys Course)

DATE: 13 December 2001

LENGTH: 51:00

SPEAKER: LTC Curtis A. Parker, Professor, Legal Assistance Branch, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: The student will understand how to determine and report gain derived from the sale of rental real property. The student will be introduced to the concepts of recaptured and un-recaptured gain under Internal Revenue Code § 1250. The student will understand recapture of depreciation and gain attributable to the Accelerated and Modified Accelerated Cost Recovery System of depreciation. The student will be able to account for the gain of property qualifying for the capital gain exclusion under I.R.C. § 121 when such property has been rented, either in whole or in part. The student will understand how to complete Form 4797, Schedule D, and the sale of home worksheets.

JA-02-0059A

IRS Practice and Procedure (5th Tax Law for Attorneys Course)

DATE: 13 December 2001

LENGTH: 38:00

SPEAKER: LTC Curtis A. Parker, Professor, Legal Assistance Branch, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: The student will understand the new structure of the IRS and how to assist taxpayers in dealing with the IRS. The student will understand recent changes regarding new taxpayer rights and procedures with emphasis on increased appeal rights and early referral to mediation and arbitration.

JA-02-0060A

Divorce Taxation (5th Tax Law for Attorneys Course)

DATE: 13 December 2001

LENGTH: 44:10

SPEAKER: MAJ Janet A. Fenton, Deputy Chief, Legal Assistance Policy Division; Office of the Judge Advocate General, U.S. Army.

SYNOPSIS: The student will understand principles of federal taxation that impact on those who are divorced or separated. Special emphasis will be devoted to these principles during pre-divorce counseling.

JA-02-0061A

State Taxation of Income and Income Tax Aspects of SSCRA (5th Tax Law for Attorneys Course)

DATE: 13 December 2001

LENGTH: 24:45

SPEAKER: MAJ Janet A. Fenton, Deputy Chief, Legal Assistance Policy Division; Office of the Judge Advocate General, U.S. Army.

SYNOPSIS: The student will be able to apply the Soldiers and Sailors' Civil Relief Act to state income tax problems. The student will be introduced to concepts states apply to tax individual income (e.g., domicile, statutory residence, place of earnings) and some of the reporting methods and requirements used by states.

JA-02-0074A

Revolution in Veterans Affairs, A (21st Charles L. Decker Lecture in Administrative and Civil Law)

DATE: 28 March 2002

LENGTH: 65:00

SPEAKER: Honorable Anthony J. Principi, Secretary of Veterans Affairs.

SYNOPSIS: The Secretary of Veterans Affairs discusses the history of the VA, the important role of service members in society, and recent initiatives in the VA to better serve former service members.

JA-02-0084A

Family Law Overview, Parts I & II (50th Legal Assistance Course)

DATE: 13 May 2002

LENGTH: 48:51/42:00

SPEAKER: COL Mark Sullivan, Law Offices of Mark Sullivan, Raleigh, North Carolina.

SYNOPSIS: The student will be exposed to an overview of family law issues that are relevant to the military practitioner. The overview will cover the spectrum of family law issues surrounding marriage, divorce, separation, property division, and child custody and support.

JA-02-0085A

Casualty Assistance: The Pentagon Family Assistance Center (50th Legal Assistance Course)

DATE: 15 May 2002

LENGTH: 55:30

SPEAKER: LTC Craig Bell, Chief, Legal Assistance, 10th Legal Support Organization; COL Robert Erickson, Commander, 10th Legal Support Organization; and LTC Thomas Emswiler, Executor Director of the Armed Forces Tax Council.

SYNOPSIS: The panel, consisting of active and reserve Judge Advocates, will discuss the revolutionary approach taken to coordinate and implement a combined governmental agency emergency operations casualty center in the aftermath of the 11 September terrorist attack on the Pentagon. The Pentagon Family Assistance Center (PFAC) involved the integration of active and reserve component service members aligned with representatives of FEMA, FBI, Social Security, Red Cross, a number of specialized Victim Relief organizations, and various other casualty service and benefit providers operated under a "single roof" to provide maximum services and support to the victims' families. The Panel will discuss the concept, staffing issues, intergovernmental agency decision-making, logistics, and the delivery of aid and benefits to the families directly impacted by 11 September.

JA-02-0086A

Child Custody: The Military Practitioner's Perspective (50th Legal Assistance Course)

DATE: 16 May 2002

LENGTH: 71:30

SPEAKER: BG Jeffery Arnold, The Assistant Judge Advocate General for Military Law and Operations (IMA); Partner, Jones, Osteen, Jones and Arnold; Hinesville, Georgia.

SYNOPSIS: The student will understand recent developments in child custody law and how best to apply these developments to assist service members and their families, both through the use of preventive law programs and legal remedies.

JA-02-0087A

Practical Tips for the Family Law Practitioner (50th Legal Assistance Course)

DATE: 17 May 2002

LENGTH: 71:50

SPEAKER: BG Jeffery Arnold, The Assistant Judge Advocate General for Military Law and Operations (IMA); Partner, Jones, Osteen, Jones and Arnold; Hinesville, Georgia.

SYNOPSIS: The student will be exposed to various family law issues common to military legal assistance attorneys and will be provided practical solutions to these issues from a seasoned family law and military attorney.

JA-02-0090A

Case Management and Responsibility for Conducting Litigation (20th Federal Litigation Course)

DATE: 05 August 2002

LENGTH: 45:50

SPEAKER: LTC John Moran, IMA Faculty, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: This class covers the responsibilities of Army lawyers and the Department of Justice, especially activity in the early stages of litigation and representation of individually sued defendants. The role of the United States magistrate in civil cases is also discussed.

JA-02-0091A

Systematic Analysis of Cases in Federal Litigation (20th Federal Litigation Course)

DATE: 05 August 2002

LENGTH: 80:30

SPEAKER: COL Chuck Allen, IMA Faculty, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: This class explains the analytical framework by which issues raised in most cases in federal litigation can be quickly identified and analyzed.

JA-02-0092A

The Removal of Cases to Federal Courts (20th Federal Litigation Course)

DATE: 06 August 2002

LENGTH: 48:25

SPEAKER: LTC John Moran, IMA Faculty, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: This class covers the procedures for removal of federal cases from state court to federal court and how the United States is substituted as defendant in some cases.

JA-02-0093A

Technology in Litigation (20th Federal Litigation Course)

DATE: 06 August 2002

LENGTH: 46:30

SPEAKER: COL Chuck Allen, IMA Faculty, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: This class explains current technology that can be employed to improve trial preparation and presentation.

JA-02-0094A

Pleadings and Motion Practice (20th Federal Litigation Course)

DATE: 06 August 2002

LENGTH: 87:50

SPEAKER: LTC Meg O. Steinbeck, IMA Faculty, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: This class will help the student understand federal pre-trial and trial procedure, including service of process, pleadings, motions to dismiss, and motions for summary judgment.

JA-02-0095A

Discovery Theory and Practice, Parts I & II (20th Federal Litigation Course)

DATE: 06 August 2002

LENGTH: 61:00/45:50

SPEAKER: COL Chuck Allen, IMA Faculty, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: This class explains the rules and tactics of federal discovery, including interrogatories, request for admission, and depositions.

JA-02-0096A

Evidentiary Objections (20th Federal Litigation Course)

DATE: 07 August 2002

LENGTH: 47:50

SPEAKER: LTC Meg O. Steinbeck, IMA Faculty, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: This class explains the Federal Rules of Evidence with a special emphasis on those rules encountered in a Federal Civil Practice.

JA-02-0097A

Pre-trial Preparation (20th Federal Litigation Course)

DATE: 07 August 2002

LENGTH: 35:27

SPEAKER: LTC John Moran, IMA Faculty, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: This class explains the requirements, issues, and practical techniques involved in pre-trial preparation.

JA-02-0098A

Federal Appellate Practice (20th Federal Litigation Course)

DATE: 07 August 2002

LENGTH: 52:32

SPEAKER: Mr. Anthony Steinmeyer, Appellate Staff, Civil Division, Department of Justice.

SYNOPSIS: This class explains the jurisdictional and procedural rules governing appellate practice in the federal courts. Discussion includes what questions can be appealed from a federal trial court, which appellate courts have jurisdiction over the appeal, and how an appeal is perfected and pursued.

JA-02-0099A

Depositions (20th Federal Litigation Course)

DATE: 07 August 2002

LENGTH: 51:44

SPEAKER: COL Chuck Allen, IMA Faculty, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: This class covers federal discovery through depositions. The class is practice-oriented and covers both taking depositions and defending them.

JA-02-0100A

Alternative Dispute Resolution in Federal Practice (20th Federal Litigation Course)

DATE: 08 August 2002

LENGTH: 36:44

SPEAKER: Mr. Karl Bird, Acting Chief, ADR Division, Office of Air Force Chief Trial Attorney, Wright-Patterson AFB.

SYNOPSIS: This class explains alternative dispute resolution practices encountered in federal practice. Instruction focuses primarily on negotiation and mediation tactics and techniques.

JA-03-0007A

Introduction to Federal Employment (56th Federal Labor Relations Course)

DATE: 21 October 2002

LENGTH: 41:40

SPEAKER: MAJ Michele E. Williams, Professor, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: **SYNOPSIS NOT AVAILABLE.**

JA-03-0008A

Merit Systems Protection Board: Practice and Procedure, Parts I & II (56th Federal Labor Relations Course)

DATE: 22 October 2002

LENGTH: 49:00/48:20

SPEAKER: MAJ Tom Damisch, USMC, Regional Labor Counselor, Office of Counsel, Eastern Area Counsel Office, Camp Legune, North Carolina.

SYNOPSIS: **SYNOPSIS NOT AVAILABLE.**

JA-03-0009A

Contractor Employees and the EEO Process (56th Federal Labor Relations Course)

DATE: 22 October 2002

LENGTH: 40:00

SPEAKER: Mr. James Szymalak, EEO Program and Policy Advisor, Labor and Employment Law Division, Office of The Judge Advocate General, Department of the Army.

SYNOPSIS: **SYNOPSIS NOT AVAILABLE.**

JA-03-0010A

Current Issues Before the Federal Labor Relations Authority (56th Federal Labor Relations Course)

DATE: 23 October 2002

LENGTH: 90:17

SPEAKER: Mr. David M. Smith, Solicitor, Federal Labor Relations Authority, Washington DC.

SYNOPSIS: **SYNOPSIS NOT AVAILABLE.**

JA-03-0011A

Equal Employment Opportunity Commission: Update, Parts I & II (56th Federal Labor Relations Course)

DATE: 23 October 2002

LENGTH: 47:08/50:47

SPEAKER: Mr. Don Names, Director of Special Services, Office of Federal Operations, US Equal Opportunity Commission, Washington D.C.

SYNOPSIS: **SYNOPSIS NOT AVAILABLE.**

JA-03-0012A

Reemployment Rights (56th Federal Labor Relations Course)

DATE: 24 October 2002

LENGTH: 50:00

SPEAKER: LTC Pamela Stahl, Professor and Chair, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: **SYNOPSIS NOT AVAILABLE.**

JA-03-0013A

Unfair Labor Practices (56th Federal Labor Relations Course)

DATE: 24 October 2002

LENGTH: 38:20

SPEAKER: MAJ Andrew J. Glass, Professor, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: **SYNOPSIS NOT AVAILABLE.**

JA-03-0014A

Reductions in Force (56th Federal Labor Relations Course)

DATE: 24 October 2002

LENGTH: 43:12

SPEAKER: MAJ Andrew J. Glass, Professor, Administrative and Civil Law Department, TJAGSA.

SYNOPSIS: **SYNOPSIS NOT AVAILABLE.**

JA-03-0015A

Disability Discrimination (56th Federal Labor Relations Course)

DATE: 24 October 2002

LENGTH: 76:40

SPEAKER: Mrs. Louise Schmidt, Civilian Personnel Law Team, Labor and Employment Law Division, Office of the Judge Advocate General, U.S. Army, Rosslyn, Virginia.

SYNOPSIS: **SYNOPSIS NOT AVAILABLE.**

JA-03-0016A

Civilian Personnel Litigation, Parts I & II (56th Federal Labor Relations Course)

DATE: 25 October 2002

LENGTH: 57:11/46:30

SPEAKER: Chief, Civilian Personnel Branch, Litigation Division, U.S. Army Legal Services Agency, Arlington, Virginia.

SYNOPSIS: **SYNOPSIS NOT AVAILABLE.**

JA-92-0026K

Choosing a Forum: ASBCA or Claims Court (1992 Government Contract Law Symposium)

DATE: 15 January 1992

LENGTH: 47:00

SPEAKER: Mr. Ronald A. Schechter; Jones, Day, Reavis & Progue, Washington, D.C. and the Honorable Carol Park-Conroy, Armed Services Board of Contract Appeals, Falls Church, Virginia.

SYNOPSIS: Discussion of practical considerations for a contractor in choosing the claims court or a board of contract appeals as a forum to litigate a claim.

JA-93-0017K

Application of Antitrust Laws to Corporate Mergers and Acquisitions Involving Government Contractors (1993 Government Contract Law Symposium)

DATE: 11 January 1993

LENGTH: 42:00

SPEAKER: Professor William E. Kovacic, George Mason University; Arlington, Virginia.

SYNOPSIS: Professor Kovacic explains the basics of antitrust laws and how they affect reorganizations and restructuring by government contractors. Differences between DOJ, FTC, and DOD are explored.

JA-93-0018K

Historical Perspective on the Government Contracting Process (1993 Government Contract Law Symposium)

DATE: 11 January 1993

LENGTH: 28:00

SPEAKER: Mr. James F. Nagle, Oles, Morrison & Rinkler; Seattle, Washington.

SYNOPSIS: Mr. Nagle discusses those recurring themes in government contracting that influence today's laws, policies, and practices.

JA-94-0019K

Recognizing/Preventing Antitrust Violations (1994 Government Contract Law Symposium)

DATE: 13 January 1994

LENGTH: 52:00

SPEAKER: Professor William E. Kovacic, George Mason University School of Law; Arlington, Virginia.

SYNOPSIS: This block of instruction covers issues related to identifying and preventing antitrust violations in a competitive corporate environment.

JA-94-0069K

Overview: Litigation in the Court of Federal Claims (1st Federal Courts and Boards Litigation Course)

DATE: 12 September 1994

LENGTH: 51:00

SPEAKER: Mr. Steven Schooner, Commercial Litigation Division; Department of Justice, Washington, D.C.

SYNOPSIS: Mr. Schooner explains the type of cases litigated in the Court of Federal Claims and how cases are processed.

JA-94-0070K

Overview: Litigation in the Federal District Courts (1st Federal Courts and Boards Litigation Course)

DATE: 12 September 1994

LENGTH: 42:30

SPEAKER: Mr. Gill Beck, Assistant U.S. Attorney; Middle District of N.C.

SYNOPSIS: Mr. Beck explains the type of cases litigated in the Federal District Courts and how cases are typically processed.

JA-94-0071K

Review of Claims and Preparing Rule 4 Files (1st Federal Courts and Boards Litigation Course)

DATE: 12 September 1994

LENGTH: 43:20

SPEAKER: MAJ Karl Ellcessor, Instructor; Contract Law Division, TJAGSA.

SYNOPSIS: Major Ellcessor discusses the roles and responsibilities of the trial attorney and the field attorney in reviewing and investigating contract claims.

JA-94-0072K

Pricing of Claims and Quantum Hearings, Parts I & II (1st Federal Courts and Boards Litigation Course)

DATE: 12 September 1994

LENGTH: 44:45/51:30

SPEAKER: MAJ Steven Tomanelli, USAF, Instructor; Contract Law Division, TJAGSA.

SYNOPSIS: Major Tomanelli discusses the cost principles applicable to the pricing of claims and equitable adjustments to contracts.

JA-94-0073K

Depositions (1st Federal Courts and Boards Litigation Course)

DATE: 13 September 1994

LENGTH: 44:00

SPEAKER: LTC Glen Monroe, Instructor (IMA); Contract Law Division, TJAGSA.

SYNOPSIS: LTC Monroe explains the procedures and techniques used to depose witnesses prior to trial.

JA-94-0074K

Pleadings and Motions, Parts I & II (1st Federal Courts and Boards Litigation Course)

DATE: 13 September 1994

LENGTH: 40:13/41:00

SPEAKER: Mr. Richard Parker, Assistant U.S. Attorney; Eastern District of Virginia.

SYNOPSIS: Mr. Parker discusses the practical considerations of preparing pleadings, raising defenses and arguing motions in the Federal District Courts.

JA-94-0075K

Litigation Techniques in the ASBCA (1st Federal Courts and Boards Litigation Course)

DATE: 13 September 1994

LENGTH: 53:30

SPEAKER: LTC Bobby Melvin, Contract Appeals Division; U.S. Army Legal Services Agency, Washington, D.C.

SYNOPSIS: LTC Melvin discusses the practical aspects of litigating cases in the Armed Services Board of Contract Appeals and various issues of current interest.

JA-94-0076K

Discovery, Parts I & II (1st Federal Courts and Boards Litigation Course)

DATE: 14 September 1994

LENGTH: 56:00/41:27

SPEAKER: Mr. James A. Hughes, Jr., Counsel, King and Spaulding, Washington, D.C.

SYNOPSIS: Mr. Hughes discusses the practical aspects of formulating and drafting discovery requests with emphasis on interrogations, requests for production of documents and requests for admissions.

JA-94-0077K

Preparing Evidence and Trial Witnesses for Trial (1st Federal Courts and Boards Litigation Course)

DATE: 14 September 1994

LENGTH: 40:00

SPEAKER: Ms. Jeri Sommers, Commercial Litigation Division; Department of Justice, Washington, D.C.

SYNOPSIS: Ms. Sommers explains how to prepare testimonial evidence and trial exhibits.

JA-94-0078K

Cross-Examining Expert Witnesses (1st Federal Courts and Boards Litigation Course)

DATE: 14 September 1994

LENGTH: 41:37

SPEAKER: Ms. Jeri Sommers, Commercial Litigation Division; Department of Justice, Washington, D.C.

SYNOPSIS: Ms. Sommers discusses common techniques used to cross-examine expert witnesses.

JA-94-0080K

Temporary Restraining Orders, Preliminary Injunctions (1st Federal Courts and Boards Litigation Course)

DATE: 15 September 1994

LENGTH: 51:40

SPEAKER: MAJ Raymond J. Jennings, Jr., Instructor, Administrative and Civil Law Division, TJAGSA.

SYNOPSIS: Major Jennings discusses the practical considerations in responding to motions for temporary restraining orders and preliminary injunctions.

JA-94-0081K

DoJ/Agency Relationship, Parts I & II (1st Federal Courts and Boards Litigation Course)

DATE: 15 September 1994

LENGTH: 49:50/15:30

SPEAKER: Ms. Donna Maizel, Commercial Litigation Division; Department of Justice, Washington, D.C.

SYNOPSIS: Ms. Maizel discusses the role of Department of Justice and Federal Agency attorneys in conducting litigation in the federal courts.

JA-94-0083K

Suspensions and Debarments (1st Federal Courts and Boards Litigation Course)

DATE: 15 September 1994

LENGTH: 53:00

SPEAKER: Mr. John Farenish, Office of General Counsel; Department of the Navy, Washington, D.C.

SYNOPSIS: Mr. Farenish discusses the use of the government's debarment and suspension remedies for addressing problems with a contractor.

JA-94-0084K

Qui Tam Litigation (1st Federal Courts and Boards Litigation Course)

DATE: 15 September 1994

LENGTH: 44:00

SPEAKER: LTC Glen Monroe, Instructor (IMA); Contract Law Division, TJAGSA.

SYNOPSIS: LTC Monroe discusses Qui Tam litigation procedures and the roles of the agency attorney, the U.S. Attorney, the Realtors attorney and the contractor's attorney.

JA-95-0044K

Contractor Teaming Arrangements (1995 Government Contract Law Symposium)

DATE: 12 January 1995

LENGTH: 48:40

SPEAKER: Professor William Kovacic, George Mason University; Fairfax, Virginia.

SYNOPSIS: Professor Kovacic examines the increased use of contractor teaming arrangements, and discusses the effect of these arrangements on competition for the government's requirements.

JA-95-0045K

Ethics in Government Acquisitions (1995 Government Contract Law Symposium)

DATE: 12 January 1995

LENGTH: 39:40

SPEAKER: Honorable William Coleman III, General Counsel; Department of the Army, Washington, D.C.

SYNOPSIS: Mr. Coleman discusses the importance of ethics in the acquisition process.

JA-95-0061K

Pricing of Contract Adjustments (1995 Government Contract Law Symposium)

DATE: 13 March 1995

LENGTH: 52:30

SPEAKER: MAJ Steven N. Tomanelli, Instructor and Air Force Representative, Contract Law Division, TJAGSA.

SYNOPSIS: Major Tomanelli explains the various methods of pricing adjustments and the cost principles applicable to the pricing of such adjustments.

JA-95-0070K

Indicators of Fraud (1st Procurement Fraud Course)

DATE: 27 March 1995

LENGTH: 48:00

SPEAKER: MAJ Patrick O' Hare, Instructor, Criminal Law Division, TJAGSA.

SYNOPSIS: Major O'Hare discusses how to identify fraudulent activity as it arises during the performance of a government contract.

JA-95-0071K

Civil Remedies/Civil Law Update, Parts I & II (1st Procurement Fraud Course)

DATE: 27 March 1995

LENGTH: 51:30/49:00

SPEAKER: MAJ Patrick O' Hare, Instructor, Criminal Law Division, TJAGSA.

SYNOPSIS: This presentation addresses the statutory civil remedies available to the procurement fraud advisor to combat procurement fraud. The instruction will also highlight developments involving the Civil False Claims Act and the Qui Tam provision of the False Claims Act. Additionally, this instruction addresses the role of the Department of Justice Civil Division in processing a civil case.

JA-95-0072K

Cost Principles, Parts I & II (1st Procurement Fraud Course)

DATE: 29 March 1995

LENGTH: 51:00/37:50

SPEAKER: MAJ Steven N. Tomanelli, USAF, Instructor; Contract Law Division, TJAGSA.

SYNOPSIS: Major Tomanelli, the premier USAF Contract Law instructor at TJAGSA, discusses the fascinating world of cost accounting standards and federal procurement law. In this animated block of instruction, Major Tomanelli addresses the basic principles of cost accounting and then walks the student through a hypothetical problem focusing on how to identify problem areas in cost accounting examinations done as part of a procurement fraud investigation.

JA-95-0077K

State and Local Taxation (6th Installation Contracting Course)

DATE: 02 May 1995

LENGTH: 39:00

SPEAKER: Mr. Larry Rowe

SYNOPSIS: Mr. Rowe discusses the theories that states rely on to tax government furnished property used by contractors.

JA-95-0078K

Alternative Disputes Resolution Mediation Demonstration, Parts I, II & III (6th Installation Contracting Course)

DATE: 03 May 1995

LENGTH: 59:00/59:00/50:00

SPEAKER: A member of the American Bar Association's Public Contract Law Section leads a panel discussion of private attorneys and professional mediators on the use of mediation to settle contract disputes.

SYNOPSIS: The panel demonstrates the use of mediation to resolve a construction contract claim.

JA-96-0033K

Contract Disputes Act and Tucker Act Jurisdiction, Parts I & II (1st Contract Litigation Course)

DATE: 25 March 1996

LENGTH: 49:30/22:00

SPEAKER: LTC Richard Bean, USAR, IMA Professor, Contract Law Dept.; TJAGSA.

SYNOPSIS: LTC Bean presents the nuances and pitfalls of the Contract Disputes Act and Tucker Act.

JA-96-0034K

Government Accounting Office Bid Protest Practice, Parts I & II (1st Contract Litigation Course)

DATE: 25 March 1996

LENGTH: 40:00/54:00

SPEAKERS: Ms Christine Melody, Ms Behn Miller; Office of the General Counsel, Government Accounting Office.

SYNOPSIS: Ms. Melody and Ms. Miller discuss the practical aspects of litigating cases before the General Accounting Office, with emphasis on recent changes to the Bid Protest Rules.

JA-96-0035K

Using Expert Witnesses (1st Contract Litigation Course)

DATE: 26 March 1996

LENGTH: 51:30

SPEAKER: Mr. John Jones, of Counsel, Bryan, Cave, LLP, Phoenix, AZ.

SYNOPSIS: Mr. Jones discusses how to obtain, prepare, and utilize expert witnesses in contract litigation.

JA-96-0036K

Litigation from Start to Finish: A View from the Trenches (1st Contract Litigation Course)

DATE: 27 March 1996

LENGTH: 45:00

SPEAKER: MAJ H. Josseph Batey, Trial Attorney, Air Force Legal Services, Commercial Lit Division.

SYNOPSIS: Major Batey discusses the practical aspects of litigation in the Court of Federal Claims in the context of a recently adjudicated case.

JA-96-0037K

Federal Court Litigation: TRO's and PI's (1st Contract Litigation Course)

DATE: 28 March 1996

LENGTH: 43:00

SPEAKER: Mr. Richard Parker, Assistant U.S. Attorney; Eastern District of Virginia.

SYNOPSIS: Mr. Parker discusses procedural requirements for contractors to obtain injunctive relief in Federal Court, and common defenses used by government attorneys when responding to requests for temporary restraining orders or preliminary injunctions.

JA-96-0038K

Fraud Litigation (1st Contract Litigation Course)

DATE: 29 March 1996

LENGTH: 42:30

SPEAKER: MAJ Thomas Dworschak, Special Assistant U.S. Attorney; Eastern District of Virginia.

SYNOPSIS: Major Dworschak discusses how the government litigates fraud cases, with emphasis on the commonly litigated fraud issues such as defective pricing, product substitution, false certifications and statements, and bribery.

JA-96-0046K

Planning, Programming and Budgeting Systems, Parts I & II (45th Fiscal Law Course)

DATE: 15 May 1996

LENGTH: 50:45/24:42

SPEAKER: LTC Thomas Evans, Defense Systems Management College; FT Belvoir, Virginia.

SYNOPSIS: This block of instruction covers issues related to the Army budgeting process. That is, it covers the steps necessary for planning, programming and budgeting Army resources.

JA-97-0033K

Government Information Practices, Parts I & II (138th Contract Attorneys Course)

DATE: 06 March 1997

LENGTH: 56:00/41:00

SPEAKERS: LTC Joe Frisk, Professor, Administrative and Civil Law Department, TJAGSA, and Colonel Richard Huff, Attorney, U.S. Department of Justice, IMA, Contract Law Department, TJAGSA.

SYNOPSIS: The student will understand the fundamental relationship between Contract Law, the Freedom of Information Act, and the Privacy Act.

JA-97-0034K

Selected Labor Standards, Parts I & II (138th Contract Attorneys Course)

DATE: 10 March 1997

LENGTH: 45:00/41:30

SPEAKER: MAJ Timothy Pendolino, Professor; Contract Law Department, TJAGSA.

SYNOPSIS: The student will understand the basic labor standards applicable to government contracting.

JA-97-0035K

Contract Disputes Act, Parts I, II & III

DATE: 11 March 1997

LENGTH: 48:46/50:00/30:00

SPEAKER: LTC Karl Ellcessor, Vice Chair; Contract Law Department, TJAGSA.

SYNOPSIS: This block of instruction focuses on contract litigation under the Contract Disputes Act of 1978.

JA-97-0036K

Deployment Contracting, Parts I & II (138th Contract Attorneys Course)

DATE: 13 March 1997

LENGTH: 42:30/38:00

SPEAKER: MAJ Timothy Pendolino, Professor; Contract Law Department, TJAGSA.

SYNOPSIS: The student will understand the basic issues confronting those tasked with providing contracting support to a deployed organization. Topics covered include planning for deployment contracting; fiscal issues during deployments; humanitarian, civic, and security assistance issues during deployments; and contracting during deployments.

JA-97-0038K

Alternative Disputes Resolution, Parts I & II (1st Advanced Contract Course)

DATE: 24 March 1997

LENGTH: 50:00/26:00

SPEAKERS: Mr. Steven Klatsky, LTC Paul Hoburg, Mr. Mark A. Sagan, Mr. Jeffrey I. Kessler, US Army Materiel Command, Alexandria, Virginia.

SYNOPSIS: The student will understand the programs and procedures currently used by the Army Materiel Command to resolve disputes with contractors prior to litigation.

JA-97-0040K

Historical Perspective on the Court of Federal Claims, A (1st Advanced Contract Course)

DATE: 25 March 1997

LENGTH: 48:00

SPEAKER: Honorable Eric G. Bruggink, US Court of Federal Claims, Washington, D.C.

SYNOPSIS: Judge Bruggink explores the historical development of jurisdiction at the US Court of Federal Claims.

JA-97-0041K

Fiscal Law (1st Advanced Contract Course)

DATE: 25 March 1997

LENGTH: 51:00

SPEAKER: Mr. Gary Keppinger, Office of Counsel, US General Accounting Office.

SYNOPSIS: The student will understand the import of recent developments in the area of fiscal law as it pertains to government acquisitions.

JA-97-0042K

Government Furnished Property, Parts I & II (1st Advanced Contract Course)

DATE: 25 March 1997

LENGTH: 38:00/44:30

SPEAKER: LTC Steven Tomanelli, Office of General Counsel, US Air Force, Washington, D.C.

SYNOPSIS: The student will understand the requirements regarding the provision of and responsibility for government furnished property. Students will also understand the forthcoming changes in the regulations governing this area.

JA-97-0043K

New Legal Instruments, Parts I & II (1st Advanced Contract Course)

DATE: 25 March 1997

LENGTH: 38:00/53:30

SPEAKERS: Mr. Jay Winchester, US Army Medical Research and Materiel Command, Ft. Detrick, Md., Ms Kathy Anne Kurke, Chief Counsel, NASA Langley Research Center, Hampton, Virginia.

SYNOPSIS: The student will understand the recently enacted statutory authorities that authorize DoD to enter into non-procurement transactions, such as cooperative research and development agreements and partnering agreements, for research and development.

JA-97-0044K

Information Technology, Parts I & II (1st Advanced Contract Course)

DATE: 26 March 1997

LENGTH: 47:30/51:00

SPEAKER: Mr. Rand Allen, of Wiley, Rein, and Fielding, Washington D.C.

SYNOPSIS: The student will understand the latest developments in the implementation of the Clinger-Cohen Act as it pertains to information technology acquisitions.

JA-97-0045K

Contract Litigation, Parts I & II (1st Advance Contract Course)

DATE: 27 March 1997

LENGTH: 46:00/48:00

SPEAKERS: Mr. Charles Marvin, Jr., Mr. Paul Debolt, of Venable, Baetjer, Howard and Cileletti, Washington, D.C.

SYNOPSIS: Students will understand strategies and techniques used by the private bar in contract litigation against the government.

JA-97-0046K

International Cooperative Agreements (1st Advanced Contract Course)

DATE: 28 March 1997

LENGTH: 53:00

SPEAKER: LTC James Miller, Office of General Counsel, US Army, Washington, D.C.

SYNOPSIS: The student will understand the laws and regulations that govern sales of defense supplies and services to foreign governments.

JA-98-0035K

Contract Law 1997: The Year in Review, Parts I – V (1997 Government Contract Law Symposium)

DATE: December 1997

LENGTH: 59:00/63:00/59:45/61:00/67:30

SPEAKERS: Faculty, Contract Law Department; TJAGSA.

SYNOPSIS: The student will understand the significant judicial, legislative, and regulatory developments in government contract and fiscal law, bankruptcy, taxation, and environmental law during FY 1997.

JA-98-0036K

Adarand Decision, The (1997 Government Contract Law Symposium)

DATE: December 1997

LENGTH: 68:00

SPEAKER: Honorable John Kane, Judge; US District Court, Colorado.

SYNOPSIS: The student will understand the significant judicial decision of Adarand. The Judge who wrote the decision teaches this class. This decision has radically changed government procurement law especially in the area of small business and small disadvantaged business concerns.

JA-98-0037K

Federal Procurement Process: A Congressional View (14th Gilbert A. Cuneo Lecture - 1997 Government Contract Law Symposium)

DATE: December 1997

LENGTH: 59:40

SPEAKER: Congressman Thomas M. Davis, US House of Representatives; 11th Congressional District, Virginia.

SYNOPSIS: The student will understand the acquisition reform measures recently mandated by Congress, their implementation, and the concerns of the policy makers regarding acquisition initiatives in this time of government downsizing.

JA-98-0038K

Privatization and Outsourcing, Parts I & II (Panel Presentation - 1997 Government Contract Law Symposium)

DATE: 8 December 1997

LENGTH: 57:30/51:00

MODERATOR: Ms. Elizabeth Buchanon, US Army Materiel Command.

SPEAKERS (Panelists): Mr. Greg Petkoff, General Counsel's Office, US Air Force, Mr. Jesse Bendahan, General Counsel's Office, US Navy, Mr. Chuck Roederheimer, Defense Logistics Agency.

SYNOPSIS: The student will understand the impact and challenges associated with government downsizing and the efforts to contract out or privatize activities previously performed by government agencies.

JA-98-0039K

Acquisition Issues Panel, Parts I & II (Panel Presentation - 1997 Government Contract Law Symposium)

DATE: 9 December 1997

LENGTH: 60:30/51:00

MODERATOR: Mr. Anthony H. Gamboa, Deputy General Counsel; General Accounting Office.

SPEAKERS (Panelists): Mr. Edward Korte, Command Counsel, US Army Materiel Command; COL Bernard Chachula, Chief, Contract Law, US Air Force Materiel Command, Ms. Sophie A. Krasik, Assistant General Counsel, Department of the Navy.

SYNOPSIS: The student will understand the purpose and the advantages and disadvantages of various legislative and executive branch acquisition initiatives from the perspectives of the major procurement commands within the Department of Defense.

JA-98-0040K

Future of Acquisition Reform, The (1997 Government Contract Law Symposium)

DATE: 9 December 1997

LENGTH: 77:40

SPEAKER: Professor William E. Kovacic, George Mason University School of Law; Arlington, Virginia.

SYNOPSIS: The student will understand the developing trends in government acquisition practices and fiscal law.

JA-98-0041K

General Counsel's Panel, Parts I & II (Panel Presentation - 1997 Government Contract Law Symposium)

DATE: 9 December 1997

LENGTH: 68:00/45:00

SPEAKERS: Mr. John T. Kuelbs, Vice President and Associate General Counsel, Hughes Aircraft Company; Mr. John E. Preston, Senior Vice President and General Counsel, Litton Industries, Inc; Mr. Edward C. Bruntrager, Corporate Vice President and General Counsel, General Dynamics Corporation; Mr. Michael C. Eberhardt, Vice President, General Counsel and Secretary E Systems, Inc; Mr. Richard R. Molleur, Corporate Vice President and General Counsel, Northrup Grumman.

SYNOPSIS: The student will understand the effects of acquisition reform and the declining defense budget on the American defense industry and the nation industrial base.

JA-98-0042K

Future of Technology Acquisitions, The (1997 Government Contract Law Symposium)

DATE: 10 December 1997

LENGTH: 78:30

SPEAKER: Mr. Rand Allen, Partner; Wiley, Rein & Fielding.

SYNOPSIS: The student will understand the impact of reform and downsizing efforts on the acquisition of information technology as well as current trends and issues involving the procurement of information systems hardware and software.

JA-98-0043K

View from the United States Court of Federal Claims, A (1997 Government Contract Law Symposium)

DATE: 11 December 1997

LENGTH: 68:30

SPEAKER: Honorable Eric G. Bruggink, Judge, U.S. Court of Federal Claims.

SYNOPSIS: The student will understand the recent acquisition reform efforts and recent developments in the procurement process from the perspective of a Court of Federal Claims (COFC) judge.

JA-98-0044K

Acquisition Reform and Competition (1997 Government Contract Law Symposium)

DATE: 11 December 1997

LENGTH: 70:00

SPEAKER: Mr. Ross Branstetter, Attorney; Miller & Chevalier, Washington, D.C.

SYNOPSIS: The student will understand the significant acquisition developments in the area of competition.

JA-98-0045K

Department of Veteran's Affairs Fraud Program/Debarment and Suspension Program, Parts I & II (9th Annual Major Frank B. Creekmore Lecture - 1997 Government Contract Law Symposium)

DATE: 11 December 1997

LENGTH: 55:00/74:00

SPEAKER: Mr. Gary J. Krump, Deputy Assistant Secretary, Acquisition and Materiel Management, U.S. Department of Veteran's Affairs.

SYNOPSIS: The student will understand the significant judicial, legislative, and regulatory developments in government contract and fiscal law from the perspective of a member of the Veteran's Administration.

JA-98-0046K

Chief Trial Attorneys Roundtable, Parts I & II (Panel Presentation - 1997 Government Contract Law Symposium)

DATE: 12 December 1997

LENGTH: 55:00/42:30

MODERATOR: COL Nicholas (Chip) P. Retson.

SYNOPSIS: The student will understand developing trends in Contract Disputes Act litigation and significant decisions issued by the Armed Services Board of Contract Appeals during 1997.

JA-98-0051K

Overview of the Contract Process (140th Contract Attorneys Course)

DATE: 2 March 1998

LENGTH: 44:30

SPEAKER: LTC Karl M. Ellcessor III, Professor and Chair, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: The student will understand the fundamentals of the federal contract system and the general principles of law applicable to federal contracting. The student will also understand the federal contracting process from requirement identification to receipt of the goods or services by the ultimate user.

JA-98-0052K

Authority to Contract (140th Contract Attorneys Course)

DATE: 2 March 1998

LENGTH: 50:50

SPEAKER: MAJ Kathryn R. Sommerkamp, Professor and Vice Chair, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: The student will understand the sources of federal contracting authority and the major legal issues that arise in exercising such authority.

JA-98-0053K***Sealed Bidding, Parts I & II (140th Contract Attorneys Course)***

DATE: 3 March 1998

LENGTH: 50:00/66:30

SPEAKER: M Kathryn R. Sommerkamp, Professor and Vice Chair, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: The student will understand the laws, regulations, and procedures governing sealed bidding procurements.

JA-98-0054K***Bid Protest, Parts I, II & III (140th Contract Attorneys Course)***

DATE: 5 March 1998

LENGTH: 43:30/51:00/51:50

SPEAKER: LTC Karl M. Ellcessor III, Professor and Chair, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: The student will understand the bid protest procedures and related remedies available to an unsuccessful bidder or offeror before the agency, the General Accounting Office (GAO), the Court of Federal Claims, and federal district courts.

JA-98-0055K***Ethics in Government Contracting (140th Contract Attorneys Course)***

DATE: 5 March 1998

LENGTH: 87:30

SPEAKER: MAJ Kathryn R. Sommerkamp, Professor and Vice Chair, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: The student will understand the procurement integrity provisions of the Office of Federal Procurement Policy Act Amendments of 1988, statutory restrictions on post government employment, and the application of the Joint Ethics Regulation to the contracting process.

JA-99-0008K***Government Contract Law 1998: The Year in Review, Parts I - V (1998 Government Contract Law Symposium)***

DATE: 7-11 December 1998

LENGTH: 64:00/58:40/57:34/56:00/63:00

SPEAKER: MAJ David Wallace, MAJ Elizabeth Berrigan, MAJ Jody Hehr, MAJ Mary Harney and MAJ Thomas Hong; Professors, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: The student will understand the significant judicial, legislative, and regulatory developments in government contract and fiscal law, bankruptcy, taxation, and environmental law during FY 1998.

JA-99-0009K***Government Contract Law: The Year in Preview - Ten Things to Watch for in FY99 (1998 Government Contract Law Symposium)***

DATE: 7 December 1998

LENGTH: 71:00

SPEAKER: Steven L. Schooner, Professor; George Washington University School of Law

SYNOPSIS: The student will understand upcoming developments and milestones in procurement reform. Professor Schooner, until recently an Office of Federal Procurement Policy official, will cover the likely results of recent policy decisions and regulatory changes.

JA-99-0010K***Commercial Buying Practices: Commercial Offers or Commercial Sales (1998 Government Contract Law Symposium)***

DATE: 7 December 1998

LENGTH: 59:00

SPEAKER: Ms. Marcia G. Madsen, Partner, Miller and Chevalier, Washington D.C.

SYNOPSIS: The student will understand the acquisition reform measures that increase the government's reliance on the commercial marketplace and its use of commercial buying practice. This class will take a hard look at what has been achieved, including: the impact on major systems acquisition, outsourcing, the explosion of government-wide contracting vehicles, commercial item pricing, and commercial services.

JA-99-0011K***Fraud Remedies: Getting the Dosage Right (10th Annual Major Frank B. Creekmore Lecture - 1998 Government Contract Law Symposium)***

DATE: 7 December 1998

LENGTH: 67:00

SPEAKER: William E. Kovacic, Professor; George Mason University School of Law

SYNOPSIS: The student will understand the impact of the Civil False Claims Act of government procurement markets. This class will address the effectiveness of this Act as well as its deterrent effect on industry participation.

JA-99-0012K***Acquisition Issues, Parts I & II (Panel Presentation - 1998 Government Contract Law Symposium)***

DATE: 8 December 1998

LENGTH: 59:30/58:30

SPEAKERS: Mr. Anthony H. Gamboa, Mr. Edward J. Korte, Ms. Sophie A. Krasik and Mr. John P. Janecek

SYNOPSIS: The student will understand the purpose and the advantages and disadvantages of various legislative and executive branch acquisition initiatives from the perspectives of the major procurement commands within the Department of Defense.

JA-99-0013K

Cooperative Agreements and Other Transactions: Background and History, Parts I & II (1998 Government Contract Law Symposium)

DATE: 8 December 1998

LENGTH: 48:14/57:30

SPEAKER: Ms. Diane M. Sidebottom, Assistant General Counsel; Defense Advanced Research Projects Agency

SYNOPSIS: The student will understand the inherent advantages and disadvantages of these "non-acquisition" instruments, as well as the recently expanded legislative authority for prototype system development.

JA-99-0014K

Acquisition Reform in Practice: The Warfighting Rapid Acquisition Process (1998 Government Contract Law Symposium)

DATE: 9 December 1998

LENGTH: 67:00

SPEAKER: BG Joseph L. Yakovac, Assistant Deputy for Systems Management; Office of the Assistant Secretary of the Army.

SYNOPSIS: The student will understand recent attempts to speed up the fielding of urgently needed new technologies to the soldier. This class will address the Warfighter Rapid Acquisition Process and how the accelerated availability of funds allows the Army to jump-start new technologies that are still under development but nearing the production phase.

JA-99-0015K

Recent Developments in Contract Litigation (1998 Government Contract Law Symposium)

DATE: 9 December 1998

LENGTH: 71:40

SPEAKER: Mr. C. Stanley Dees, Attorney; McKenna and Cuneo

SYNOPSIS: The student will understand the impact of recent developments in contract litigation. From the private bar's perspective, the speaker will address significant changes in jurisdiction issues (including sovereign immunity), damages, procedure, contract interpretation, implied-in-fact contracts, terminations, and breaches of contract.

JA-99-0016K

Industry General Counsel, Parts I & II (Panel Presentation - 1998 Government Contract Law Symposium)

DATE: 9 December 1998

LENGTH: 63:00/35:30

MODERATOR: Mr. John T. Kuelbs, Senior Vice President, Raytheon Systems Company

SPEAKERS: Mr. Frank C. Marshall, Jr.; Mr. Stephen M. Post, Mr. Stephen E. Smith.

SYNOPSIS: The student will understand the defense industry's view on the current state of government procurement, addressing concerns such as whether multiple award task and delivery contracts take the new post-reform, "streamlined" acquisition process too far.

JA-99-0017K

Affirmative Action in Contracting after Adarand (1998 Government Contract Law Symposium)

DATE: 10 December 1998

LENGTH: 73:55

SPEAKER: Mr. Mark Gross, Deputy Chief Appellate Section; Department of Justice-Civil Rights Division.

SYNOPSIS: The student will understand the recent Department of Justice efforts to revitalize small disadvantaged business set-aside programs in light of recent adverse judicial decisions.

JA-99-0018K

Army Acquisition Reform (1998 Government Contract Law Symposium)

DATE: 10 December 1998

LENGTH: 68:00

SPEAKER: Mr. Gregory Doyle, Senior Procurement Analyst, Department of the Army, Acquisition Reform Office.

SYNOPSIS: This block of instruction addresses the application of procurement reform in the Army.

JA-99-0019K

Current Issues and Future Trends in the MAS Program and GWACs, Parts I & II (Panel Presentation - 1998 Government Contract Law Symposium)

DATE: 11 December 1998

LENGTH: 52:30/58:30

MODERATOR: Mr. Ron R. Hutchinson, Doyle and Bachman.

SYNOPSIS: This block of instruction discusses current issues and future trends related to multiple award contracting and schedule buys.

JA-99-0020K

View from the Bench, A (15th Annual Gilbert A. Cuneo Lecture - 1998 Government Contract Law Symposium)

DATE: 11 December 1998

LENGTH: 63:00

SPEAKER: Honorable Paul R. Michel, The Court of Appeals for the Federal Circuit.

SYNOPSIS: The student will understand recent holdings on contract issues from the Court of Appeals for the Federal Circuit, as well as an appellate perspective on the adjudication of contract issues by the Court of Federal Claims and other federal courts.

JA-99-0021K

Office of Federal Procurement Policy Perspective (1998 Government Contract Law Symposium)

DATE: 11 December 1998

LENGTH: 34:40

SPEAKER: Ms. Diedre Lee, Administrator; Office of Federal Procurement Policy.

SYNOPSIS: The student will understand the purpose and the advantages and disadvantages of various legislative and executive branch acquisition initiatives from the perspective of the Office of Federal Procurement Policy (OFPP).

JA-99-0027K

Socioeconomic Policies, Parts I & II (142nd Contract Attorneys Course)

DATE: 2 March 1999

LENGTH: 39:40/45:00

SPEAKER: MAJ David Wallace, Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: This class covers socioeconomic policies in federal contracting. Specifically, this block focuses on policies impacting small business, small disadvantaged businesses, and domestic preferences.

JA-99-0028K

Procurement Fraud (142nd Contract Attorneys Course)

DATE: 8 March 1999

LENGTH: 82:48

SPEAKER: MAJ David Wallace, Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: This class covers issues related to procurement fraud in federal contracting. Specifically, this block covers the four remedies used to combat procurement fraud: criminal, civil, administrative, and contractual.

JA-99-0029K

Inspection, Acceptance, and Warranties, Parts I & II (142nd Contract Attorneys Course)

DATE: 8 March 1999

LENGTH: 43:00/54:30

SPEAKER: MAJ Dave Freeman, Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: This class covers the rights and obligations of the government and contractors regarding the inspection, acceptance, and warranty of goods and services provided under government contracts.

JA-99-0030K

Contract Terminations, Parts I & II (142nd Contract Attorneys Course)

DATE: 10 March 1999

LENGTH: 81:14/38:38

SPEAKER: MAJ David Wallace, Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: This class covers issues relating to terminating government contracts. Specifically, this class covers the rights and obligations of the parties related to terminating government contracts for conveniences and default.

JA-99-0032K

Progressive Business Ventures and Instruments (2nd Advanced Contract Law Course)

DATE: 22 March 1999

LENGTH: 51:30

SPEAKER: COL James Sutton, USAF, Staff Judge Advocate; Hill Air Force Base.

SYNOPSIS: This block of instruction relates to innovative business practices and instruments being used by federal agencies.

JA-99-0033K

GAO Bid Protest (2nd Advanced Contract Law Course)

DATE: 24 March 1999

LENGTH: 90:43

SPEAKER: Mr. Dan Gordon, Associate General Counsel; Procurement Law Division, General Accounting Office.

SYNOPSIS: Students will understand the new rules of procedure applicable to GAO bid protests. Students will also understand the import of selected recent GAO protest decisions.

JA-99-0034K

Developments in Fiscal Law, Parts I & II (2nd Advanced Contract Law Course)

DATE: 24 March 1999

LENGTH: 47:26/47:30

SPEAKER: Mr. Thomas Armstrong, Assistant General Counsel, Accounting and Information Management Division, General Accounting Office.

SYNOPSIS: The student will understand the import of recent developments in the area of fiscal law as it pertains to government acquisitions.

JA-99-0045K

Intra-Government and Required Source Acquisitions (53rd Fiscal Law Course)

DATE: 29 April 1999

LENGTH: 50:00

SPEAKER: LTC Tony Helm, Professor and Chairman, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: Students will understand the two principal statutes under which agencies obtain goods and services from or through other agencies. Students will understand the mechanics of intra-governmental acquisitions, with a focus on the Miscellaneous Receipts statute, the Purpose statute, and the timing of obligations.

JA-99-0047K

Continuing Resolution Authority (53rd Fiscal Law Course)

DATE: 29 April 1999

LENGTH: 38:00

SPEAKER: MAJ David Wallace, Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: Students will understand what happens during funding gaps and when Congress passes a Continuing Resolution Authority statute as an alternative to annual Authorization and Appropriations Acts. Students will be able to solve problems that arise during, and that result from, funding gaps.

JA-00-0015K

1999 – The Year in Review, Parts I - V (1999 Government Contract Law Symposium)

DATE: 06 December 1999

LENGTH: 67:00/61:30/71:00/50:30/57:00

SPEAKER: MAJ Jody Hehr, Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: The student will understand the significant judicial, legislative, and regulatory developments in government contract and fiscal law, bankruptcy, taxation, and environmental law during FY 1999.

JA-00-0016K

Panel Presentation: Contractors in the Workplace, Parts I & II (1999 Government Contract Law Symposium)

DATE: 06 December 1999

LENGTH: 47:43/57:30

MODERATOR: Mr. Korte, Command Counsel; U.S. Army Materiel Command

SPEAKERS: Mr. Dominic A. Femino, Jr., Deputy Command Counsel; Mr. Michael Wentink, Esquire; Mr. William Medsger, Esquire; Ms. Diane Travers, Esquire; all of the Office of Command Counsel, U.S. Army Materiel Command, Alexandria Virginia.

SYNOPSIS: The student will understand the problems associated with contract personnel found in the workplace.

JA-00-0017K

Ethics Aspects of Outsourcing and Privatization (1999 Government Contract Law Symposium)

DATE: 07 December 1999

LENGTH: 64:00

SPEAKER: Ms. Elizabeth Buchanan, Office of General Counsel; Department of the Army.

SYNOPSIS: The student will understand the background, problem issues, and policy issues, associated with outsourcing and privatization.

JA-00-0018K

Lucas Industries: A Case Study in Fraud, Parts I & II (11th Annual Major Frank B. Creekmore Lecture - 1999 Government Contract Law Symposium)

DATE: 07 December 1999

LENGTH: 54:30/41:30

SPEAKER: Mr. John Farenish, Deputy General Counsel; Defense Contract Audit Agency, Washington D.C.

SYNOPSIS: The student will be introduced to a case study of a significant fraud against the government. The student will understand the procurement fraud process and lessons-learned from the case study.

JA-00-0019K

Military Spending (16th Annual Gilbert A. Cuneo Lecture – 1999 Government Contract Law Symposium)

DATE: 08 December 1999

LENGTH: 91:00

SPEAKER: LTG Paul J. Kern, Director; Army Acquisition Corps.

SYNOPSIS: The student will be introduced to current acquisition reform measures taking place in the Department of Defense (DoD), the complicated interaction of acquisition law and fiscal law and real-world problems that have occurred recently in DoD.

JA-00-0020K

Litigation: The U.S. Court of Federal Claims (1999 Government Contract Law Symposium)

DATE: 09 December 1999

LENGTH: 62:30

SPEAKER: Honorable Eric G. Bruggink, U.S. Court of Federal Claims, Washington D.C.

SYNOPSIS: The student will understand the historical perspective of litigating claims at the Court of Federal Claims and will be introduced to the court's new bid protest jurisdiction and recent decisions.

JA-00-0021K

Types of Contracts, Parts I, II & III (144th Contract Attorneys Course)

DATE: 28 February 2000

LENGTH: 44:50/60:30/34:00

SPEAKER: Major Thomas L. Hong, Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: Major Hong explains the various types of contracts used by the government and the restrictions therein.

JA-00-0022K

Contract Methods: Negotiations, Parts I, II & III (144th Contract Attorneys Course)

DATE: 29 February 2000

LENGTH: 48:00/57:45/40:43

SPEAKER: CPT Scott McCaleb, IMA Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: The student will understand the laws, regulations, and procedures applicable to competitively negotiated procurements.

JA-00-0027K

Litigation Risk Assessment (3rd Contract Litigation Course)

DATE: 22 March 2000

LENGTH: 61:36

SPEAKER: Mr. Craig Miller, President, The Miller Group PLLC, Washington D.C. and Savannah, GA.

SYNOPSIS: Mr. Miller explains the benefits of using litigation risk assessment tools as a means to effectively manage and resolve contract disputes.

JA-00-0028K

Litigating Complex Cases, Parts I & II (3rd Contract Litigation Course)

DATE: 23 March 2000

LENGTH: 49:30/55:50

SPEAKER: Mr. Jeff Stacey (USAR), U.S. Department of Justice, Washington D.C.

SYNOPSIS: Mr. Stacey provides insight on the challenges of litigating a complex contract dispute before a Board of Contract Appeals, to include managing personnel, conducting discovery, presenting the case at a hearing, and writing the post-hearing brief.

JA-00-0029K

View from the Bench, A: An ASBCA Perspective (3rd Contract Litigation Course)

DATE: 24 March 2000

LENGTH: 66:30

SPEAKER: Honorable Carol Park-Conroy, Judge; The Armed Services Board of Contract Appeals

SYNOPSIS: Judge Park-Conroy provides practical tips for attorneys practicing before the Armed Services Board of Contract Appeals.

JA-00-0031K

Availability of Appropriations as to Purpose, Parts I, II & III (56th Fiscal Law Course)

DATE: 1 May 2000

LENGTH: 49:00/49:00/47:22

SPEAKER: Major Elizabeth Berrigan, Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: This class addresses the “Purpose” prong of the fiscal law analysis; specifically, that the government may obligate and expend appropriated funds only for those purposes for which Congress has appropriated the funds, and for reasons that are necessary and incidental to achieving the purposes of the appropriation. Additionally, the class addresses the limitations on augmentation and the proper use of representation funds, and addresses numerous problem issues that have resulted in the improper obligation or expenditure of funds.

JA-00-0032K

Availability of Appropriations as to Time, Parts I & II (56th Fiscal Law Course)

DATE: 01 May 2000

LENGTH: 48:00/45:30

SPEAKER: Major Mary Beth Harney, USAF, Professor Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: This class addresses the “Time” prong of the fiscal law analysis; specifically, that the government may obligate and expend appropriated funds only during stated periods of availability and only for the bona fide needs of those periods. Additionally, the class addresses the various time limitations on obligating different types of appropriations and the rules governing the use of expired appropriations.

JA-00-0033K

Obligating Appropriated Funds – Contract Types, Parts I & II (56th Fiscal Law Course)

DATE: 02 May 2000

LENGTH: 44:00/54:30

SPEAKER: Major Thomas L. Hong, Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: This class addresses the “Amount” prong of the fiscal law analysis; specifically, the rules governing the commitment and obligation of appropriated funds. The instruction focuses on how to compute the quantum of obligations created by the formation and modification of government contracts, and how to adjust obligations when the government modifies or terminates a contract.

JA-01-0004K

Intragovernmental and Required Source Acquisitions (58th Fiscal Law Course)

DATE: 02 November 2000

LENGTH: 52:11

SPEAKER: Major Louis Chiarella, Professor, Contract and Fiscal Law, TJAGSA.

SYNOPSIS: This block of instruction covers the two principal statutes under which agencies obtain goods and services from or through other agencies. The instruction provides an understanding of the mechanics of intra-governmental acquisitions, with a focus on the Economy Act, the Project Order Statute, and the timing of obligations.

JA-01-0010K

Fiscal Year 2000: The Year in Review, Parts I - VI (2000 Government Contract and Fiscal Law Symposium)

DATE: 5, 6, 7 & 8 December 2000

LENGTH: 50:30/54:30/55:30/56:10/46:50/37:50

SPEAKER: COL John Kosarin, IMA Professor; Major John J. Siemietkowski, Professor; Major Louis A. Chiarella, Professor; Major Jonathan C. Guden, Professor; Major Karen S. White, USAF, Professor; Major Kevin M. Walker, Professor; Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: The faculty of the Contract and Fiscal Law Department present the highlights of the FY 2000 Year in Review. The most important legislation, cases, and regulatory changes of the year 2000 are covered.

JA-01-0011K

Current Issues and Future Plans, Parts I & II (The 17th Gilbert A. Cuneo Lecture - 2000 Government Contract and Fiscal Law Symposium)

DATE: 05 December 2000

LENGTH: 67:40/30:00

SPEAKER: Ms. Deidre Lee, Director of Defense Procurement, Department of Defense.

SYNOPSIS: Ms. Lee discusses the challenges facing the DoD acquisition community in the immediate future and her plans and ideas for dealing with some of those challenges.

JA-01-0012K

Hot Topics (2000 Government Contract and Fiscal Law Symposium)

DATE: 06 December 2000

LENGTH: 48:36

SPEAKER: LTC Steven Tomanelli, Chief, Contract and Fiscal Law Division, Headquarters AMC/JA, Scott Air Force Base, Illinois.

SYNOPSIS: Lt Col Tomanelli uses fact-based scenarios to lead the audience through a discussion of some of the most troublesome legal issues facing acquisition professionals in their practices.

JA-01-0013K

Civil Fraud Litigation (12th Major Frank B. Creekmore Lecture - 2000 Government Contract and Fiscal Law Symposium)

DATE: 07 December 2000

LENGTH: 88:00

SPEAKER: Mr. Stuart Schiffer, Deputy Assistant Attorney General; Civil Division, Department of Justice.

SYNOPSIS: Mr. Schiffer discusses the Civil False Claims Act and the coordination that must take place between the Department of Defense and the Department of Justice for such prosecutions to be successful.

JA-02-0044K

Government Contract Law: The Year in Review, Parts I-V (2001 Government Contract Law Symposium)

DATE: 4 - 7 December 2001

LENGTH: 46:26/53:00/57:30/54:15/51:17

SPEAKER: MAJ Greg Sharp, MAJ John Siemietkowski, MAJ Kevin Walker, MAJ Tom Modeszto, and LTC Michael Benjamin, Professors, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: The TJAGSA faculty discusses the significant judicial, legislative, and regulatory developments in government contract and fiscal law and related areas in 2001.

JA-02-0045K

Current Topics in Government Procurement (18th Annual Gilbert A. Cuneo Lecture - 2001 Government Contract Law Symposium)

DATE: 04 December 2001

LENGTH: 64:00

SPEAKER: Ms. Angela Styles, Administrator; Office of Federal Procurement Policy, Washington D.C.

SYNOPSIS: Ms. Styles discusses the challenges facing the acquisition community with a focus on the competition and outsourcing.

JA-02-0046K

The Office of the DoD Inspector General (13th Annual Major Frank B. Creekmore Lecture - 2001 Government Contract Law Symposium)

DATE: 06 December 2001

LENGTH: 90:22

SPEAKER: Mr. Charles W. Beardall, Deputy Assistant Inspector General, Criminal Investigative Policy and Oversight, Department of Defense, Arlington, Virginia.

SYNOPSIS: Mr. Beardall discusses the organization of the DOD Inspector General's Office, the role of that office in fighting procurement fraud, and some of the significant developments in the area of procurement fraud.

JA-02-0063K***Construction Funding, Parts I & II (62nd Fiscal Law Course)***

DATE: 26 February 2002

LENGTH: 34:50/56:28

SPEAKER: MAJ Kevin Walker, Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: This class addresses the numerous unique rules and requirements relating to the funding of construction contracts. The instruction focuses on how to differentiate construction from maintenance and repair, how to distinguish between specified and unspecified construction statutory provisions, a methodology for determining the scope of a construction project, and how to avoid problems when selecting funding authorizations.

JA-02-0064K***Antideficiency Act, Parts I & II (62nd Fiscal Law Course)***

DATE: 26 February 2002

LENGTH: 56:00/83:81

SPEAKER: LTC Tim Pendolino, Professor and Chair, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: This class addresses the statutes and regulations that establish and implement fiscal controls. The class also reviews specific scenarios with a focus on the relationship between the Purpose Statute, Bona Fide Needs Rule, and Antideficiency Act. Finally the class covers investigation and reporting requirements imposed by the Antideficiency Act and be agency regulations.

JA-02-0065K***Non-Appropriated Funds (62nd Fiscal Law Course)***

DATE: 26 February 2002

LENGTH: 47:30

SPEAKER: MAJ John Siemietkowski, Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: This class discusses the unique statutory and regulatory provisions that distinguish the treatment of non-appropriated funds from appropriated funds.

JA-02-0066K***Payment and Collection, Parts I & II (62nd Fiscal Law Course)***

DATE: 27 February 2002

LENGTH: 35:88/53:28

SPEAKER: MAJ Karen White, USAF; Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: This class addresses the rules to apply when dealing with contractor requests for payment of claims against the United States, claims by the United States against contractors, final payment, and assignment of claims.

JA-02-0067K***Reprogramming (62nd Fiscal Law Course)***

DATE: 28 February 2002

LENGTH: 44:40

SPEAKER: LTC Tim Pendolino, Professor and Chair, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: This class addresses the statutory and regulatory rules and procedures that allow the government to move funds between appropriations and between accounts in order to deal with changing requirements.

JA-02-0068K***Environmental Funding (62nd Fiscal Law Course)***

DATE: 28 February 2002

LENGTH: 36:15

SPEAKER: MAJ Kevin Walker, Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: This class addresses the unique statutory and regulatory provisions and requirements that distinguish allocation of costs and funding for environmental activities from other types of activities.

JA-02-0069K***Revolving Funds (62nd Fiscal Law Course)***

DATE: 28 February 2002

LENGTH: 44:00

SPEAKER: MAJ John Siemietkowski, Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: This class addresses the unique fiscal law issues involved in the operation of revolving funds and how improper use of revolving funds may result in a violation of the Antideficiency Act. Additionally, the class addresses how to solve funding problems resulting from activity purchases from revolving funds.

JA-02-0070K***Liability of Accountable Officers (62nd Fiscal Law Course)***

DATE: 1 March 2002

LENGTH: 47:35

SPEAKER: MAJ Karen White, USAF; Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: This class addresses the statutory and regulatory bases for liability of accountable officers and how accountable officers may be relieved of pecuniary liability.

JA-02-0079K***Funding and Fund Limitations, Parts I & II (148th Contract Attorneys Course)***

DATE: 29 April 2002

LENGTH: 42:00/46:30

SPEAKER: LTC Timothy Pendolino, Professor and Chair, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: LTC Pendolino provides a basic understanding of the appropriation and budget process; including the types of funds, the proper use of those funds, and the common problems associated with funding government procurements.

JA-02-0080K

Negotiations; Parts I, II & III (148th Contract Attorneys Course)

DATE: 01 May 2002

LENGTH: 49:30/48:00/46:50

SPEAKER: MAJ Karen White, USAF; Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: MAJ White discusses the laws, regulations, and procedures applicable to competitively negotiated procurements.

JA-02-0081K

Construction Contracting, Parts I & II (148th Contract Attorneys Course)

DATE: 03 May 2002

LENGTH: 78:00

SPEAKER: MAJ Kevin Walker, Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: MAJ Walker discusses the unique requirements of construction contracting and the common legal issues that arise under construction contracts.

JA-02-0082K

Competitive Sourcing, Parts I & II (148th Contract Attorneys Course)

DATE: 07 May 2002

LENGTH: 48:00/48:50

SPEAKER: MAJ Karen White, USAF; Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: MAJ White explains the policies and procedures generally applicable to service contracting, including personal services, inherently governmental functions, and the Commercial Activities Program.

JA-02-0083K

Alternative Dispute Resolution (148th Contract Attorneys Course)

DATE: 08 May 2002

LENGTH: 47:45

SPEAKER: MAJ Karen White, USAF; Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: MAJ White explains the purpose and application of alternative methods of resolving disputes in the contract law arena (e.g., protests and CDA claims) as required by the Alternative Disputes Resolution Act (ADRA).

JA-02-0101K

Deployment Contracting (38th Operational Law Seminar).

DATE: 14 August 2002

LENGTH: 53:20

SPEAKER: MAJ Karl Kuhn, Professor, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: The student will understand the basic rules governing contracting in a deployed environment. The class will emphasize the methods and authorities for procuring items using the proper procedures during the course of operational deployments.

JA-03-0019K

Contract Law: The Year in Review; Parts I, II, III & IV (2002 Contract and Fiscal Law Symposium).

DATE: 03-05 December 2002

LENGTH: 61:10/74:56/34:41/33:45

SPEAKER: MAJ Thomas C. Modeszto, MAJ Karl W. Kuhn (Vice Chair), MAJ Bobbi J. W. Davis, MAJ James M. Dorn; Professors, Contract and Fiscal Law Department, TJAGSA.

SYNOPSIS: The speakers review the significant judicial, legislative, and regulatory developments in government contract and fiscal law that occurred during FY 2002 (presentations highlight the most significant developments reported in the department's annual *Army Lawyer* article entitled "Contract and Fiscal Law Developments - The Year in Review").

JA-03-0020K

The Role of GAO in the Federal Procurement Process, Parts I & II (19th Gilbert A. Cuneo Lecture - 2002 Contract and Fiscal Law Symposium).

DATE: 04 December 2002

LENGTH: 51:35/54:50

SPEAKER: Mr. David M. Walker, The Comptroller General of the U.S., U.S. General Accounting Office, Washington D.C.

SYNOPSIS: The Comptroller General discusses the role of the General Accounting Office within the context of federal procurements. The presentation specifically addresses the mission of the General Accounting Office and discusses trends in spending and the shrinking acquisition workforce. The Comptroller General also fields questions from the audience on a wide variety of topics.

JA-03-0021K

Twenty Years Fighting Defense Contract Fraud (14th Annual Major Frank B. Creekmore Lecture - 2002 Contract and Fiscal Law Symposium).

DATE: 05 December 2002

LENGTH: 85:13

SPEAKER: Mr. Richard J. Bednar, Crowell & Moring, L.L.P., Washington D.C.

SYNOPSIS: General Bednar provides a concise overview of the developments that have taken place between 1982 and 2002 in the field of procurement fraud, with an emphasis on those developments applicable to defense contractors.

JA-03-0028K

Funding U.S. Military Operations (65th Fiscal Law Course)

DATE: 26 February 2003

LENGTH: 63:00

SPEAKER: LTC Kelly Wheaton, Office of Legal Counsel, Chairman of the Joint Chiefs of Staff.

SYNOPSIS: Analysis of the different funding authorities and funding sources for foreign humanitarian assistance, military cooperative activities with foreign allies, and logistical support with foreign allies. These activities are discussed in the context of military deployments for training exercises, peacekeeping operations, disaster relief operations, combat operations, or other contingencies.

JA-03-0033K

Pitfalls of ASBCA Practice (4th Advanced Contract Law Course)

DATE: 17 March 2003

LENGTH: 46:30

SPEAKER: Honorable Michael T. Paul, Judge; Armed Services Board of Contract Appeals.

SYNOPSIS: Judge Paul, an Administrative Judge from the Armed Services Board of Contract Appeals (ASBCA), discusses his judicial philosophy and observations from the bench on a variety of contract litigation issues, including the evolution of the ASBCA, effective litigation techniques, and civility between government and appellant counsels.

JA-03-0034K

Environmental Law for Contract Professionals (4th Advanced Contract Law Course)

DATE: 18 March 2003

LENGTH: 45:30

SPEAKER: Major Joseph D. Jacobson, Environmental Law and Litigation Division, Air Force Litigation Service Agency, Arlington, Virginia.

SYNOPSIS: Major Joseph Jacobson, a trial attorney with the Environmental Law and Litigation Division, Air Force Litigation Service Agency, offers a brief background on environmental contracting for the Department of Defense and current environmental issues facing the military services.

JA-03-0035K

Judgment Fund (4th Advanced Contract Law Course)

DATE: 20 March 2003

LENGTH: 45:30

SPEAKER: William Erle, Esquire; Office of the Chief Counsel, Department of the Treasury, Washington D.C.

SYNOPSIS: Mr. William Erle, Legal Counsel for the Department of Treasury's Financial Management Service, explains how the judgment fund operates, including under what circumstances payments may be made out of the judgment fund and when reimbursement is required.

JA-365-1C & 2C

Impact of Scientific Evidence on the Criminal Justice System, Parts I & II (12th Annual Kenneth J. Hodson Lecture)

DATE: 18 March 1983

LENGTH: 50:00/52:00

SPEAKER: Professor Edward J. Imwinkelried, Washington University; St. Louis, Missouri.

SYNOPSIS: Professor Imwinkelried discusses issues concerning character and scientific evidence on the criminal justice system.

JA-86-0064C

Counsel's Courtroom Ethics, Parts I & II (29th Military Judge Course)

DATE: 23 May 1986

LENGTH: 57:41/42:00

SPEAKER: Dean John J. Douglass, Dean of National College of District Attorneys.

SYNOPSIS: Dean Douglass discusses issues concerning ethics and counsel in the courtroom as well as the judicial role in trial ethics.

JA-88-0056C

Cross-Examination and Advocacy, Parts I & II (20th Criminal Trial Advocacy Course)

DATE: 10 February 1988

LENGTH: 60:00/55:00

SPEAKER: Mr. F. Lee Bailey

SYNOPSIS: Mr. F. Lee Bailey, who got his start as a military defense counsel, addresses the purposes, techniques and pitfalls of cross-examination. His discussion is interspersed with teaching points based on cases and situations he has faced. He closes with a lively question and answer session addressing general advocacy and ethics topics.

JA-89-0026C

Trial Advocacy: "Nothing is Written," Parts I & II (22nd Criminal Trial Advocacy Course)

DATE: 06 February 1989

LENGTH: 50:00/62:00

SPEAKER: Mr. Vaughan E. Taylor, Attorney, Taylor, Kripner and Horbaly.

SYNOPSIS: Mr. Taylor addresses a variety of advocacy techniques that defense and government counsels may employ to develop their own skills and to improve the military justice system. These include, unlawful command influence by judge advocates, using judges as article 32 investigating officers, mixed plea instructions, and administrative board hearings.

JA-89-0039C

Three Hundred Years of Military Justice, Parts I & II (Reserve Component SJA Course)

DATE: 04 April 1989

LENGTH: 58:00/32:00

SPEAKER: COL (Ret) Frederick Bernays Wiener

SYNOPSIS: Tricentennial of the Mutiny Act Presentation. COL Wiener traces the development of military criminal law from the First Mutiny Act in England in 1689 through today. He discusses how military law generally underwent changes following every major armed conflict, he highlights the leading figures and controversies in the development of the military criminal justice system, and he suggests that the Manual for Courts-Martial has become too big and should be reduced in size.

JA-89-0042C

Trial Advocacy: Opening Statements

DATE: May 1989

LENGTH: 35:00

SPEAKER: MAJ Harry L. Williams, Instructor; Criminal Law Division, TJAGSA.

SYNOPSIS: A complete discussion of the preparation and presentation of the opening statement for both trial and defense counsel. An example is included.

JA-89-0054C

Criminal Trial Advocacy: Arguments

DATE: 13 June 1989

LENGTH: 51:30

SPEAKER: MAJ Craig Whittman, Instructor; Criminal Law Division, TJAGSA.

SYNOPSIS: A presentation on basic tactical considerations for structuring and presenting arguments.

JA-89-0078C

Psychological Profiling of Criminals, Parts I & II (13th Criminal Law New Developments Course)

DATE: 16 August 1989

LENGTH: 53:00/55:00

SPEAKER: Special Agent Edward Sulzbach, FBI.

SYNOPSIS: Presentation discusses the psychological profiling of criminals and the application of this technique to criminal justice and law enforcement.

JA-90-0004C

Methods of Instruction: The Three Stage Process

NOTE: THIS PROGRAM IS FOR USE BY ARMY PERSONNEL ONLY.

DATE: 30 August 1990

LENGTH: 58:30

SPEAKER: LTC Timothy E. Naccarato, Chief; Criminal Law Division, TJAGSA.

SYNOPSIS: LTC Naccarato offers a process that can be used by judge advocates in successfully completing instructional missions. The viewer is asked to imagine being tasked with delivering instruction in a few days to a live audience. Identifying the immediate panic that may grip some of the viewers, LTC Naccarato suggests that if instruction is carried out in a process method, success of the mission will be more likely to occur, and the panic syndrome will be remedied. The instructional process presented involves three stages: Preparation, Rehearsal, and Execution. The viewer is encouraged to use this process and to search for other information, which will address successful teaching strategies. Naccarato refers to an article by COL Jack Rice in the May 1988 Army Lawyer in which COL Rice sites four practices used at TJAGSA. In the first stage of LTC Naccarato's process, preparation, an instructor must address six questions in order to address specific factors: needs of the target audience, limitations of teaching environment, and preparation of appropriate materials for the class. These questions are followed up with three actions to complete the preparation stage. Rehearsal is the second stage in the process. On site visits and on site rehearsals are recommended, if possible. The viewer is informed of the advantages to such an approach to instruction and the possible expenses or errors, which may be avoided by a good rehearsal. Execution, the third stage of LTC Naccarato's process, is the time when the instructor actually delivers instruction to the audience. In addition to three general suggestions mentioned by LTC Naccarato (promptness, dress, and schedule), eight specific teaching techniques are highlighted for the viewer in order to overcome some of the problems that an instructor may encounter in front of a live audience.

JA-90-0032C

Zingers, Ringers, and Sandbags: Winning Trial Techniques, Parts I & II (24th Criminal Trial Advocacy Course)

DATE: 05 February 1990

LENGTH: 50:00/48:00

SPEAKER: Mr. John Lowe, Attorney; Charlottesville, Virginia.

SYNOPSIS: Mr. Lowe presents an overview of fundamental rules of advocacy. Through the use of anecdotes and personal experiences, he teaches the proper method and theory of cross-examination, how to effectively conduct voir dire, theory and practical pointers behind opening statements and closing arguments, and how to conduct effective direct examination.

JA-90-0070C

Sexual Disorders and Treatment, Parts I & II (14th Criminal Law New Developments Course)

DATE: 16 August 1990

LENGTH: 49:00/54:00

SPEAKER: Dr. Frederick Berlin, Director; Sexual Disorders Clinic, Johns Hopkins University.

SYNOPSIS: Presentation includes general description of types of sexual disorders and treatment available for those disorders.

JA-91-0004C

Case Preparation and Trial Techniques, Parts I & II

DATE: 05 November 1990

LENGTH: 56:00/40:00

SPEAKER: Mr. R. Waco Carter, Attorney; Springfield, Missouri.

SYNOPSIS: The presentation covers effective trial techniques and addresses issues and theories involved in case preparation and presentation.

JA-91-0042C

Military Justice for the 90's: A Legal System Looking for Respect, Parts I & II (20th Annual Kenneth J. Hodson Lecture)

DATE: 28 March 1991

LENGTH: 46:00/42:00

SPEAKER: Professor David A. Schlueter, Professor of Law, St. Mary's University, San Antonio, Texas.

SYNOPSIS: Professor Schlueter discusses trial issues and procedures and proposes changes to enhance the prestige and respect given to courts-martial.

JA-92-0034C

Basic Trial Techniques, Parts I & II

DATE: 03 February 1992

LENGTH: 50:00/47:00

SPEAKER: Mr. Henry E. Hudson, U.S. Attorney, Virginia.

SYNOPSIS: Speaker's presentation provides practical trial advocacy techniques to assist attorneys new to the courtroom. His comments address all phases of the trial, beginning with advice on dealing with law enforcement agencies and followed by case preparation and presentation.

JA-92-0042C

Scientific Evidence in Criminal Prosecutions, Parts I & II (21st Annual Kenneth J. Hodson Lecture)

DATE: 26 March 1992

LENGTH: 55:21/33:41

SPEAKER: Professor Paul C. Giannelli, Professor of Law, Case Western Reserve University School of Law, Cleveland, Ohio.

SYNOPSIS: Professor Giannelli briefly reviews the history of scientific evidence in the justice system and explains why scientific evidence is so prevalent in criminal prosecutions. He highlights the problems of admissibility of novel as well as routine scientific evidence. He concludes that the major problems with the use of scientific evidence stem from the lack of proficiency testing and regulation of criminal laboratories.

JA-92-0086C

Military Cases in Child Abuse: Evidentiary Issues

DATE: 11 August 1992

LENGTH: 43:00/43:00

SPEAKER: Professor John E. B. Myers, McGeorge School of Law; University of the Pacific, Sacramento, California.

SYNOPSIS: Presentation on recent developments pertaining to the prosecution and defense of child abuse cases.

JA-92-0092C

Practical Applications of Behavioral Science to Violent Crime Investigations

DATE: 12 August 1992

LENGTH: 61:30

SPEAKER: Special Agent Steven Mardigan, Investigative Support Unit, National Center for the Analysis of Violent Crime, FBI Academy, Quantico, Virginia.

SYNOPSIS: Lecture covers practical applications of behavioral analysis in violent crime scene analysis.

JA-93-0035C

UCMJ in Wartime: The World War II Experience, Parts I & II, The

DATE: March 1993

LENGTH: 50:30/37:00

SPEAKER: Major General (Retired) Kenneth J. Hodson.
SYNOPSIS: Major General Hodson discusses personal experiences of practicing military law in Europe during WWII.

JA-93-0037C

UCMJ in Wartime: The Vietnam Experience, Parts I & II, The

DATE: March 1993

LENGTH: 47:30/55:30

SPEAKER: Mr. John Stevens Berry, Esquire, Chief Defense Counsel; II Field Force, Vietnam (1968-1969).
SYNOPSIS: Mr. Berry discusses issues concerning military justice during wartime.

JA-93-0067C

MJ Systems: Courts View, Parts I & II

DATE: August 1993
LENGTH: 44:30/45:40
SPEAKER: The Honorable Herman F. Gierke, U.S. Court of Military Appeals, Washington, D.C.
SYNOPSIS: Presentation covers recent developments and trends in military justice and retrospective and prospective looks at the Court of Military Appeals from one of its sitting judges.

JA-94-0042C

Prosecutorial Ethics, Parts I & II (23rd Annual Kenneth J. Hodson Lecture)

DATE: March 1994
LENGTH: 59:13/20:20
SPEAKER: Ms. Jo Ann Harris, Assistant Attorney General; Criminal Law Division, U.S. Department of Justice.
SYNOPSIS: Ms. Jo Ann Harris discusses professional responsibility relating to prosecutorial conduct.

JA-94-0044C

Military Justice during the Vietnam War, Parts I & II

DATE: March 1994
LENGTH: 61:00/20:30
SPEAKER: Mr. J. Stevens Berry, Esquire, Chief Defense Counsel; II Field Force, Vietnam (1968-1969).
SYNOPSIS: Mr. Berry discusses issues concerning military justice during wartime.

JA-94-0052C

Trial Advocacy, Parts I & II (1st Criminal Law Advocacy Course)

DATE: 01 April 1994
LENGTH: 54:00/45:15
SPEAKER: Professor Thomas Mauet, Professor of Law, University of Arizona School of Law.
SYNOPSIS: Professor Mauet addresses a variety of techniques that counsel may use to improve their advocacy skills.

JA-95-0016C

COMA Watch (18th Criminal Law New Developments Course)

DATE: 14 November 1994
LENGTH: 43:00
SPEAKER: MAJ R. Peter Masterton, Instructor; Criminal Law Division, TJAGSA.

SYNOPSIS: Instruction covers the interrelationship of recent cases from the Court of Military Appeals, the judicial philosophies behind the court's decisions, and likely directions the court will follow in the future.

JA-95-0017C

Court of Appeals of the Armed Forces (18th Criminal Law New Developments Course)

DATE: 14 November 1994
LENGTH: 47:00/47:00
SPEAKER: Honorable H. F. Gierke, Law Judge, U. S. Court of Military Appeals, Washington, D.C.
SYNOPSIS: Presentation covers recent developments in military justice and a discussion of cases decided by the Court of Military Appeals (recently renamed Court of Appeals of the Armed Forces) by one of its sitting judges.

JA-95-0029C

Urinalysis, Parts I & II (18th Criminal Law New Developments Course)

DATE: 17 November 1994
LENGTH: 38:30/28:00
SPEAKER: LTC Aaron Jacobs, US Army Forensic Toxicology Drug Testing Laboratory, Tripler Medical Center, Hawaii.
SYNOPSIS: Presentation covers procedures employed at military urinalysis drug testing laboratories and scientific issues, which frequently arise in urinalysis cases.

JA-95-0069C

Solicitor General's Perspective on Military Legal Issues, The, Parts I & II (24th Annual Kenneth J. Hodson Lecture)

DATE: 22 March 1995
LENGTH: 48:30/15:00
SPEAKER: Drew S. Days, III; Solicitor General of the U.S.
SYNOPSIS: Mr. Days discusses the relationship between the Solicitor General and the Department of Defense and how military justice is viewed.

JA-96-0017C

Conceptual Analysis of Criminal Law Issues (19th Criminal Law New Developments Course)

DATE: 13 November 1995
LENGTH: 42:00
SPEAKER: Honorable Susan J. Crawford, Judge, U.S. Court of Appeals for the Armed Services, Washington, D.C.
SYNOPSIS: Judge Crawford discusses her analysis of criminal law issues.

JA-96-0028C

Attributes of a Leader, Parts I & II (2nd Hugh J. Clausen Lecture on Leadership)

NOTE: THIS PROGRAM IS FOR USE BY ARMY PERSONNEL ONLY.

DATE: 31 January 1996

LENGTH: 55:00/26:00

SPEAKER: LTG Henry H. Shelton, Commander, XVIII Airborne Corps and Fort Bragg.

SYNOPSIS: LTG Shelton discusses leadership philosophy and a leader's relationship with his or her staff judge advocate.

JA-96-0040C

Trial Advocacy, Parts I & II

DATE: 19 April 1996

LENGTH: 47:45/53:30

SPEAKER: Mr. Joseph E. diGenova, Partner, diGenova & Toesing, Washington, D.C.

SYNOPSIS: Mr. diGenova discusses the fundamentals of trial advocacy. In his dramatic style, he comments on high visibility cases in the news and discusses trial ethics.

JA-96-0041C

Tribute to MG Kenneth J. Hodson, A (25th Annual Kenneth J. Hodson Lecture)

DATE: 24 April 1996

LENGTH: 58:00

SPEAKER: MG Michael J. Nardotti, Jr.

SYNOPSIS: Major General Nardotti, The Judge Advocate General discusses the life of Major General Kenneth J. Hodson, Retired, as the twenty-seventh Judge Advocate General of the Army. In this twenty-fifth Hodson Lecture, Major General Nardotti delivers a tribute to Major General Hodson, focusing on his contributions to the Army and the military justice system.

JA-97-0013C

Evidence in Child Abuse Prosecution, Parts I & II (20th Criminal Law New Developments Course)

DATE: 21 November 1996

LENGTH: 49:00/47:00

SPEAKER: Mr. John E. B. Myers, Professor of Law; University of the Pacific.

SYNOPSIS: Speaks on the evidentiary, constitutional and psychological issues involved in prosecuting and defending child abuse cases.

JA-97-0014C

Use of Polygraph Evidence in Courts-Martial, Parts I & II (20th Criminal Law New Developments Course)

DATE: 22 November 1996

LENGTH: 53:27/30:00

SPEAKER: Mr. Milton O. Webb, Chief, Polygraph Division, U. S. Army Criminal Investigation Command.

SYNOPSIS: Speaks on the practical aspects on laying the foundation to introduce polygraph evidence and discusses the new computer generated polygraph examination.

JA-97-0028C

Criminal Investigations and Activities (1st National Security Crimes Symposium)

DATE: 18 February 1997

LENGTH: 47:20

SPEAKER: Mr. M. E. (Spike) Bowman, Associate General Counsel, Federal Bureau of Investigation, Washington, D.C.

SYNOPSIS: Mr. Bowman speaks on current issues facing agencies involved in the investigation of national security crimes.

JA-97-0029C

Current Issues in National Security Crimes (1st National Security Crimes Symposium)

DATE: 21 February 1997

LENGTH: 36:40

SPEAKER: Ms. Judith Miller, Department of Defense General Counsel, Washington, D.C.

SYNOPSIS: Ms. Miller speaks on current issues within the Department of Defense relating to the investigation, prosecution, and defense of those individuals suspected of committing national security crimes.

JA-97-0047C

3rd Hugh J. Clausen Lecture on Leadership, Parts I & II

DATE: 10 April 1997

LENGTH: 38:40/37:30

SPEAKER: General David A. Bramlett

SYNOPSIS: General David A. Bramlett, Commanding General, U.S. Forces Command, addresses The Judge Advocate General's School on general concepts of leadership and management, and the necessary character traits that make a successful leader.

JA-97-0048C

UCMJ in Combat: Experiences of a Marine JA in Korea and Vietnam, Parts I & II, The

DATE: 18 April 1997

LENGTH: 57:00/59:00

SPEAKER: Professor William R. Eleazer, Stetson University College of Law; St. Petersburg, Florida.

SYNOPSIS: Professor Eleazer presents his experiences with military justice in a combat environment.

JA-97-0050C

Lessons from the Junkyard, Parts I & II

DATE: May 1997

LENGTH: 46:00/40:00

SPEAKER: Honorable Walter T. Cox, III, Chief Judge, Court of Appeals for the Armed Forces, Washington, D.C.

SYNOPSIS: Judge Cox discusses various aspects of being a trial judge, from training to dealing with specific issues and sentencing. Opening address presented to the 40th Military Judge Course, TJAGSA on 12 May 1997.

JA-98-0015C

Unlawful Command Influence (21st Criminal Law New Developments Course)

DATE: 17 November 1997

LENGTH: 53:30

SPEAKER: LTC Lawrence J. Morris, Professor and Chair, Criminal Law Department, TJAGSA.

SYNOPSIS: The most significant command influence cases of the past year are placed in the context of the continuing development of the law of unlawful command influence.

JA-98-0016C

Evidence, Parts I & II (21st Criminal Law New Developments Course)

DATE: 17 November 1997

LENGTH: 38:21/45:30

SPEAKER: LTC Stephen R. Henley, Vice Chair; Criminal Law Department, TJAGSA.

SYNOPSIS: LTC Henley discusses developments in evidence for 1997 as part of the 21st Criminal Law New Developments Course. Supreme Court, CAAF, and Service Court opinions are highlighted.

JA-98-0017C

Search and Seizure/Urinalysis (21st Criminal Law New Developments Course)

DATE: 17 November 1997

LENGTH: 50:00

SPEAKER: MAJ Charles N. Pedo, Professor; Criminal Law Department, TJAGSA.

SYNOPSIS: Major Pedo discusses new developments in search and seizure and urinalysis law for 1997 as part of the 21st Criminal Law New Developments Course. Supreme Court, CAAF, and Service Court cases are highlighted.

JA-98-0018C

Crimes and Defenses, Parts I, II, III & IV (21st Criminal Law New Developments Course)

DATE: 17 & 20 November 1997

LENGTH: 42:30/38:00/47:50/42:50

SPEAKER: MAJ John P. Einwechter, Professor; Criminal Law Department, TJAGSA.

SYNOPSIS: Major Einwechter discusses new developments in the law of pleadings and substantive crimes and defenses under the UCMJ. Includes analysis of statutory amendments to UCMJ and recent decisions of CAAF and Service Courts of Criminal appeals.

JA-98-0019C

Speedy Trial and Pretrial Restraint (21st Criminal Law New Developments Course)

DATE: 18 November 1997

LENGTH: 46:30

SPEAKER: LTC James K. Lovejoy, Professor; Criminal Law Department, TJAGSA.

SYNOPSIS: LTC Lovejoy discussed new developments in speedy trial and pretrial restraint arising from recent CAAF and Service Court opinions.

JA-98-0020C

Sentencing (21st Criminal Law New Developments Course)

DATE: 18 November 1997

LENGTH: 64:00

SPEAKER: MAJ Norman F. J. Allen III, Professor; Criminal Law Department, TJAGSA.

SYNOPSIS: Major Allen discusses new developments in sentencing for 1997 as part of the 21st Criminal Law New Developments Course.

JA-98-0022C

Voir Dire Court Personnel and Challenges, Parts I & II (21st Criminal Law New Developments Course)

DATE: 18 November 1997

LENGTH: 48:30/47:40

SPEAKER: MAJ Gregory B. Coe, Professor; Criminal Law Department, TJAGSA.

SYNOPSIS: Major Coe discusses new developments in voir dire, causal challenges, and peremptory challenges for 1997 as part of the 21st Criminal Law New Developments Course.

JA-98-0023C

Corrections Update (21st Criminal Law New Developments Course)

DATE: 19 November 1997

LENGTH: 36:30

SPEAKER: LTC Lawrence J. Morris, Professor and Chair, Criminal Law Department, TJAGSA.

SYNOPSIS: LTC Morris addresses recent developments in classifying, treating, rehabilitating and providing work for military prisoners.

JA-98-0025C

Sixth Amendment/Discovery Parts I & II (21st Criminal Law New Developments Course)

DATE: 19 November 1997

LENGTH: 49:50/43:20

SPEAKER: MAJ Edye U. Moran, Professor; Criminal Law Department, TJAGSA.

SYNOPSIS: Major Moran reviews history briefly and discusses new developments in the Sixth Amendment, mental responsibility and discovery stemming from the most recent CAAF and Service Courts opinions.

JA-98-0026C

Self-Incrimination/Jurisdiction, Parts I & II (21st Criminal Law New Developments Course)

DATE: 19 November 1997

LENGTH: 37:40/46:40

SPEAKER: MAJ Marty Sitler, USMC, Professor, Criminal Law Department, TJAGSA.

SYNOPSIS: Major Sitler discusses new developments in self-incrimination and jurisdiction for 1997 as part of the 21st Criminal Law New Developments Course. U. S. Court of Appeals for the Armed Forces and intermediate Service Court cases are highlighted.

JA-98-0027C

Pleas and Pretrial Agreements (21st Criminal Law New Developments Course)

DATE: 19 November 1997

LENGTH: 42:10

SPEAKER: MAJ Gregory B. Coe, Professor; Criminal Law Department, TJAGSA.

SYNOPSIS: Major Coe discusses new developments in pleas and pretrial agreements for 1997 as part of the 21st Criminal Law New Developments Course. U. S. Court of Appeals for the Armed Forces and intermediate service court cases are highlighted.

JA-98-0029C

Capital Litigation (21st Criminal Law New Developments Course)

DATE: 20 November 1997

LENGTH: 48:30

SPEAKER: MAJ John P. Einwechter, Professor; Criminal Law Department, TJAGSA.

SYNOPSIS: Major Einwechter reviews history and outlines current practice of capital litigation under the UCMJ and 1984 MCM. Discusses significance of recent Supreme Court, CAAF, and Service Court decisions concerning military capital litigation.

JA-98-0030C

Post-Trial Procedure, Parts I & II (21st Criminal Law New Developments Course)

DATE: 20 November 1997

LENGTH: 40:00/48:00

SPEAKER: LTC James K. Lovejoy, Professor; Criminal Law Department, TJAGSA.

SYNOPSIS: LTC Lovejoy discussed new developments in post-trial procedure stemming from the most recent CAAF and Service Court opinions.

JA-98-0031C

Professional Responsibility (21st Criminal Law New Developments Course)

DATE: 20 November 1997

LENGTH: 56:40

SPEAKER: MAJ Norman F. J. Allen III, Professor; Criminal Law Department, TJAGSA.

SYNOPSIS: Major Allen discusses new developments in professional responsibility for 1997 as part of the 21st Criminal Law New Developments Course. U.S. Court of Appeals for the Armed Forces and intermediate service court cases are highlighted.

JA-98-0032C

Daubert, Science and Syndromes: A Landscape under Construction, Parts I & II (21st Criminal Law New Developments Course)

DATE: 20 November 1997

LENGTH: 47:35/33:50

SPEAKER: COL (Ret) Lee Schinasi, University of Miami.

SYNOPSIS: Professor Schinasi discusses the admissibility of scientific and syndrome evidence.

JA-98-0033C

Use of History in Military Justice Practice, The (21st Criminal Law New Developments Course)

DATE: 21 November 1997

LENGTH: 50:00

SPEAKER: Honorable Andrew Effron, Associate Judge, Court of Appeals for the Armed Forces, Washington, D.C.

SYNOPSIS: Judge Effron discusses how history can be used as an effective tool and in the practice of military justice.

JA-98-0034C

Media Issues: Trying the High Profile Case (21st Criminal Law New Developments Course)

DATE: 21 November 1997

LENGTH: 50:00

SPEAKER: LTC Lawrence J. Morris, Professor and Chair, Criminal Law Department, TJAGSA.

SYNOPSIS: In light of the increasing number of military cases receiving public attention, LTC Morris addresses common issues as well as strategies and concerns from both the government and defense perspectives.

JA-98-0049C

Manual for Courts-Martial 20X, Parts I & II (26th Annual Kenneth J. Hodson Lecture)

DATE: 10 March 1998

LENGTH: 78:30/20:30

SPEAKER: Brigadier General John S. Cooke

SYNOPSIS: BG Cooke discusses the evolution of our military system and how it may change in the future.

JA-98-0058C

Trial Techniques of Gerald P. Boyle, Parts I & II (9th Criminal Law Advocacy Course)

DATE: 27 March 1998

LENGTH: 66:00/62:30

SPEAKER: Gerald Boyle, Civilian Defense Attorney.

SYNOPSIS: Mr. Boyle addresses a variety of techniques that counsel may use to their advocacy skills.

JA-99-0004C

Echoes and Expectations (27th Annual Kenneth J. Hodson Lecture - 22nd Criminal Law New Developments Course)

DATE: 16 November 1998

LENGTH: 61:00

SPEAKER: Honorable Walter F. Cox, III; Chief Judge, Court of Appeals for the Armed Forces.

SYNOPSIS: Judge Cox reflects upon his tenure as an Appellate Judge with the Court of Appeals for the Armed Forces. He discusses the courts evolution and its role in the future of military justice.

JA-99-0005C

Military Justice Initiatives (22nd Criminal Law New Developments Course)

DATE: 18 November 1998

LENGTH: 90:00

SPEAKER: Brigadier General Hess, USMC; Staff Judge Advocate to the Commandant, U.S. Marine Corps.

SYNOPSIS: BG Hess discusses the role of military justice in today's military and how the system may change in the future.

JA-99-0007C

The Bill of Rights and the Military Justice System, Parts I & II (22nd Criminal Law New Developments Course)

DATE: 20 November 1998

LENGTH: 46:42/52:00

SPEAKER: Dwight Sullivan, Managing Attorney, American Civil Liberties Union.

SYNOPSIS: Mr. Sullivan discusses the application of the protections afforded under the Bill of Rights to service members.

JA-99-0053C

Advocacy and the Judge Advocate, Parts I & II (12th Criminal Law Advocacy Course)

DATE: 24 September 1999

LENGTH: 50:00/48:00

SPEAKER: COL (Ret.) Lee Schinasi, Professor of Law, University of Miami.

SYNOPSIS: Professor Schinasi first gives advice to JAG attorneys just starting out as trial or defense counsel. He also provides an overview of the Supreme Court's perceptions (and misconceptions) over the years of military justice and military courts-martial. He notes that the Supreme Court currently views the military justice system in a very favorable light. Professor Schinasi devotes the second half of his lecture to an analysis of particular rules of evidence; to include more overlooked rules such as MRE 103.

JA-00-0011C

Military Justice, Parts I & II (23rd Criminal Law New Developments Course)

DATE: 15 November 1999

LENGTH: 42:30/58:00

SPEAKER: COL. (Ret) Lee Schinasi, Professor, University of Miami School of Law; Miami, Florida.

SYNOPSIS: COL Schinasi explored new arguments for the admissibility of propensity evidence and bad character evidence.

JA-00-0012C

Theories of Statutory Interpretation (23rd Criminal Law New Developments Course)

DATE: 18 November 1999

LENGTH: 78:00

SPEAKER: Mr. Dwight Sullivan, Managing Attorney, American Civil Liberties Union – Baltimore Office; Baltimore, Maryland.

SYNOPSIS: Mr. Sullivan reviewed the general principles of statutory construction and explored how military courts use the principles of statutory.

JA-00-0013C

View from the CAAF, A; Parts I & II (23rd Criminal Law New Developments Course)

DATE: 19 November 1999

LENGTH: 48:42/59:15

SPEAKER: Honorable H.F. "Sparky" Gierke, Associate Judge, Court of Appeals for the Armed Forces, Washington, D.C.

SYNOPSIS: Judge Gierke reviewed the major decisions of the Court of Appeals for the Armed Forces from 1999.

JA-00-0025C

Psychological Considerations for Jury Selection and Trial Consulting, Parts I & II

DATE: 17 March 2000

LENGTH: 43:21/58:00

SPEAKER: Major Rebecca A. Dyer, Ph.D., Brooke Army Medical Center, MCHE-CP (Department of Behavioral Medicine), Fort Sam Houston, Texas.

SYNOPSIS: Major Dyer reviews available psychological literature and research to help attorneys choose the ideal juror, interpret body language and voice patterns, and present evidence persuasively.

JA-00-0026C

Concepts of Trial Advocacy, Parts I & II (13th Criminal Law Advocacy Course)

DATE: 21 March 2000

LENGTH: 57:15/53:21

SPEAKER: COL (Ret.) John Smith, U.S. Department of Justice, Office of Intelligence and Policy Oversight, Washington D.C.

SYNOPSIS: In this video, COL John Smith, (U.S. Army, retired), tells students that becoming an effective and powerful advocate truly takes a lifetime of work, study, and practice. He presents basic themes of advocacy: the need to persuade, not law professors, but ordinary citizens; the need to develop theories, themes and “themelas”; the duties of trial and defense counsel; and the necessity of pretrial preparation. He also discusses the difference between the “practice” of law and the “art” of advocacy, focusing on key things in voir dire, opening statements, direct and cross examination, and closing arguments.

JA-00-0030C

Advanced Litigation Techniques, Parts I & II (13th Criminal Law Advocacy Course)

DATE: 31 March 2000

LENGTH: 48:50/61:30

SPEAKER: LTC (Ret.) Robert E. Nunley, USMC, Assistant Attorney General (Tort Claims Section), State of North Carolina.

SYNOPSIS: In this video, LTC Bert Nunley (USMC, retired), shows to students the importance of demonstrative evidence. Extensively relying upon photographs, drawings, and charts, he demonstrates the importance of visualizing the case for fact-finders. He also supplies students a military judge’s perspective on the importance of such evidence. Finally, LTC Nunley shows students many of the high tech demonstrative aids used by counsel

in such high profile cases as *United States v. McVeigh* (the Oklahoma City Federal Building bombing case) and *United States v. Ashby* (the Aviano Gondola disaster) to show the importance of using such evidence.

JA-00-0037C

Judicial Decision Making (28th Kenneth J. Hodson Lecture in Criminal Law)

DATE: 19 May 2000

LENGTH: 45:30

SPEAKER: Chief Judge Susan J. Crawford, U.S. Court of Appeals for the Armed Services.

SYNOPSIS: Chief Judge Susan J. Crawford of the Court of Appeals for the Armed Forces delivered the 28th Kenneth J. Hodson Lecture on Criminal Law. Chief Judge Crawford spoke about judicial decision-making. She described her approach to deciding cases using a hierarchy of sources of rights. At the top of the hierarchy is the U.S. Constitution, followed by federal statutes, executive orders, DoD and service regulations, and then common law. Chief Judge Crawford reviewed several decisions to illustrate her approach to deciding cases.

JA-00-0042C

Cross Examination (14th Criminal Law Advocacy Course)

DATE: 12 September 2000

LENGTH: 59:49/49:13/74:00

SPEAKER: Mr. Terrance MacCarthy, Executive Director, Federal Defender Program, US Court for the Northern District of Illinois, Chicago, Illinois.

SYNOPSIS: In this video, Mr. MacCarthy gives the students a systematic approach to cross-examination. Mr. MacCarthy shows students through demonstrations and examples, how to successfully cross-examination any witness. He disabuses students of the notion that cross-examination is an art that cannot be taught. Mr. MacCarthy helps students understand the goals of cross-examination, and how achieve those goals by using short leading statements.

JA-00-0043C

Evidentiary Tactics: Making the Most of Your Evidence, Parts I & II (14th Criminal Law Advocacy Course)

DATE: 22 September 2000

LENGTH: 45:12/51:00

SPEAKER: Professor David Schlueter, Hardy Professor of Trial Advocacy and Director of Trial Advocacy, St. Mary’s University School of Law, San Antonio, Texas.

SYNOPSIS: Professor Schlueter discusses advanced techniques of presenting evidence at trial, including the art of persuading affective and cognitive decision makers, the role of tactics in presenting evidence, tactics for the proponent of evidence, and tactics for the opponent of

evidence. Professor Schlueter also discusses application of these techniques to specific types of evidence, such as character evidence (M.R.E. 404), prior inconsistent statements (M.R.E. 613), and hearsay.

JA-01-0003C

My Lai Courts-Martial: A Retrospective, Parts I & II (2000 Judge Advocate General's Corps Worldwide Continuing Legal Education Workshop)

DATE: 4 October 2000

LENGTH: 50:30/50:55

SPEAKERS: COL (Ret) Carroll J. Tichenor, Yamhill County Deputy District Attorney, Yamhill County Oregon, Trial Counsel in *United States v. Henderson*; Mr. John P. Partin, Hirsch, Partin, Grogan & Grogan, Columbus, Georgia, Trial Counsel in *United States v. Calley*; COL (Ret) Kenneth Alan Raby, Senior Staff Attorney, Central Staff of the Georgia Court of Appeals, Defense Counsel in *United States v. Calley*; COL (Ret) William G. Eckhardt, Clinical Professor of Law, Director of Urban Affairs Outreach, University of Missouri-Kansas City School of Law, Chief Prosecutor, *My Lai* courts-martial. SYNOPSIS: Four participants in the most famous series of courts-martial in the history of the military justice system share their thoughts and lessons learned.

JA-01-0017C

The Courageous Journey of an American Hero, Parts I & II (7th Hugh J. Clausen Lecture on Leadership)

DATE: 26 March 2001

LENGTH: 45:47/49:15

SPEAKER: COL George E. "Bud" Day, U.S. Air Force (Retired).

SYNOPSIS: COL Bud Day, former POW and Congressional Medal of Honor winner presented the 7th Hugh J. Clause lecture on Leadership. In his presentation, COL Day recounts the experiences of his service as an Air Force Pilot in Vietnam. COL Day talks about his shoot down; capture and experiences as a prisoner of war for 65 months. COL Day shares his insights on leadership and the importance of serving and returning from Vietnam with honor.

JA-02-0002C

Right to Privacy (25th Criminal Law New Developments Course)

DATE: 05 November 2001

LENGTH: 54:30

SPEAKER: Francis Gilligan, Senior Legal Advisor, Court of Appeals for the Armed Forces.

SYNOPSIS: Overview of the most recent U.S. Supreme Court cases addressing expectations of privacy under the 4th Amendment. The overview includes a discussion of implications of these recent cases for military practitioners.

JA-02-0003C

Forensic Pathology 101, Parts I & II (25th Criminal Law New Developments Course)

DATE: 06 November 2001

LENGTH: 90:30/45:40

SPEAKER: Dr. Andrew Baker, Forensic Pathologist

SYNOPSIS: A graphic discussion of what forensic pathology is about, various uses of pathology in the courtroom and what a forensic pathologist can and cannot do for litigators.

JA-02-0073C

Leadership: Lessons Learned in an Army Career (The Eighth Hugh J. Clausen Lecture on Leadership)

DATE: 25 March 2002

LENGTH: 53:00

SPEAKER: MG Kenneth D. Gray (Ret), Vice President of Student Affairs, West Virginia University
SYNOPSIS: MG Kenneth D. Gray (Ret), Vice President of Student Affairs, West Virginia University and former The Assistant Judge Advocate General, U.S. Army delivered the 8th annual Clausen Lecture. He provided insight into almost thirty years of military service and continued public service in the field of secondary education. MG Gray shared his leadership philosophy and major accomplishments. He reflected upon those leadership values and methodologies he believes best prepare judge advocates for positions of responsibility. His lecture serves as an admirable template for "how to" lead and supervise personnel in any environment.

JA-02-0076C

Reflections on Judge Advocate Values, Parts I & II (30th Kenneth J. Hodson Lecture on Criminal Law)

DATE: 11 April 2002

LENGTH: 48:30/52:00

SPEAKER: Honorable Marc F. Racicot, Partner, Bracewell and Patterson, Washington D.C., Governor of Montana 1993-2001.

SYNOPSIS: **SYNOPSIS NOT AVAILABLE.**

JA-02-0102C

Prosecuting a Capital Case, Parts I & II (8th Military Justice Managers Course)

DATE: 30 August 2002

LENGTH: 50:00/50:00

SPEAKER: LTC Jack Einwechter, Lead Trial Counsel; U.S. v. SGT Kreutzer

SYNOPSIS: Discussion of the theory, moral questions and practical issues facing a judge advocate prosecuting a capital case. LTC Einwechter argues military counsel are well equipped to prosecute and defend cases that may result in the ultimate earthly punishment, death.

JA-02-0103C

A View from the Bench (8th Military Justice Managers Course)

DATE: 30 August 2002

LENGTH: 70:00

SPEAKER: COL Denise Vowell, Chief Trial Judge; U.S. Army.

SYNOPSIS: Compelling call-to-arms to do justice right! COL Vowell focuses on practical management issues facing chiefs of justice and counsel trying cases in the field.

JA-03-0018C

Forensic Toxicology: Hair Analysis (26th New Developments in Criminal Law Course)

DATE: 20 November 2002

LENGTH: 77:40

SPEAKER: Dr. Kathryn Kalasinsky, Chief, Research and Education, Division of Forensic Toxicology, Armed Forces Institute of Pathology, Rockville, Maryland.

SYNOPSIS:

JA-85-0134I

Experiences of a Prisoner of War, Parts I & II

DATE: 24 September 1985

LENGTH: 33:45/49:23

SPEAKER: LTC James N. Rowe

SYNOPSIS: LTC Rowe was captured by the Viet Cong in October 1963 while serving as the executive officer to a Special Forces "A" Detachment. He escaped from his captors five years later in December 1968. During his imprisonment, LTC Rowe endured constant psychological and physical torture and abuse at the hands of the Viet Cong. He witnessed fellow prisoners die of malnutrition and by execution. In this tape, LTC Rowe speaks to the 34th Graduate Class on his experiences while captured. He covers the applicability of the Geneva Conventions and the U.S. Code of Conduct in such situations.

JA-86-0070I

Responsibilities under the DoD Law of War Program

DATE: 14 July 1986

LENGTH: 60:00

SPEAKER: LTC David Graham, Chief; International Law Division, TJAGSA.

SYNOPSIS: Presentation focuses on the bases of law of war dissemination, including the commander's obligation to ensure instruction in the law of armed conflict and its observance by members of the command.

JA-89-0057I

Regulation of Hostilities: General Principles (42nd Law of War Workshop)

DATE: July 1989

LENGTH: 45:00

SPEAKER: MAJ Paul Hutter, Instructor; International Law Division, TJAGSA.

SYNOPSIS: Instruction covers the bases and the application of the principles of the law of war and their relation and compatibility with the principles of war and operational concepts.

JA-89-0059I

Law of War Training in an Exercise Environment (42nd Law of War Workshop)

DATE: July 1989

LENGTH: 38:00

SPEAKER: MAJ Paul Hutter, Instructor; International Law Division, TJAGSA.

SYNOPSIS: Major Hutter discusses various techniques of incorporating law of war training in field and command post exercises.

JA-89-0060I

Tough Questions in the Law of War (42nd Law of War Workshop)

DATE: July 1989

LENGTH: 40:00

SPEAKER: MAJ Dave O'Neil, U.S. Marine Corps, Instructor; International Law Division, TJAGSA.

SYNOPSIS: Audience will learn to address some of the more difficult law of war questions frequently asked in the classroom and in training areas.

JA-89-0061I

Introduction: The Geneva Conventions (42nd Law of War Workshop)

DATE: July 1989

LENGTH: 51:00

SPEAKER: MAJ Mark Welton, Senior Instructor; International Law Division, TJAGSA.

SYNOPSIS: Presentation focuses on the purposes of the four Geneva Conventions of 1949, their history and development, and the common articles and recent developments affecting the common articles.

JA-89-0064I

Geneva Conventions: POW's and the Code of Conduct, Parts I & II (42nd Law of War Workshop)

DATE: July 1989

LENGTH: 51:00/48:00

SPEAKER: MAJ Dave O'Neil, Instructor; International Law Division, TJAGSA.

SYNOPSIS: An application of the rules of the Geneva Convention of 1949 relating to prisoners of war and an analysis of the relation of these rules to the Code of Conduct.

JA-90-0034I

Prospect for Peace in the Middle East, Parts I & II (7th Annual Waldemar A. Solf Lecture)

DATE: 15 February 1990

LENGTH: 48:00/52:40

SPEAKER: Ambassador Moshe Arad, Israeli Ambassador to the U.S.

SYNOPSIS: With the fall of Berlin Wall and the end of the decade long Iran-Iraq War as a backdrop; Ambassador Moshe Arad (Ambassador of Israel to the United States) provides an Israeli perspective on the prospects for a comprehensive peace settlement in the Middle East.

JA-90-0036I

Regulation of Hostilities, Parts I & II (44th Law of War Workshop)

DATE: 19 March 1990

LENGTH: 50:00/50:00

SPEAKER: MAJ David P. O'Neil, U.S. Marine Corps, Instructor; International Law Division, TJAGSA.

SYNOPSIS: Discussion of the Hague Convention No. IV of 1907; the Geneva Protocol of 1925 on Gas, Asphyxiating and Biological Weapons and the contemporary development of rules concerning weapons and targets. Includes the rules of both of these treaties and of customary international law in regard to: (1) the determination of lawful targets, (2) the regulation of lawful weapons, and (3) the employment of lawful military tactics and ruses.

JA-91-0018I

Operation Desert Shield: Legal Assistance Issues, Parts I & II (8th Operational Law Seminar)

DATE: 06 December 1990

LENGTH: 46:00/51:00

SPEAKERS: MAJ Greg Huckabee, Deputy Chief, Army Legal Assistance, OTJAG, MAJ Bernard Ingold, and MAJ James Pottorff, Instructors, Administrative and Civil Law Division, TJAGSA.

SYNOPSIS: The student will be familiar with the legal issues that arose during Operation Desert Shield in the area of legal assistance. Particular emphasis is placed on Soldiers' and Sailors' Civil Relief Act and the Reserve call up.

JA-91-0019I

Operation Desert Shield: Operational and Foreign Legal Issues, Parts I & II

DATE: 06 December 1990

LENGTH: 55:30/55:00

SPEAKERS: LTC H. Wayne Elliott, Chief, International Law Division, TJAGSA; MAJ Mark D. Welton, Senior Instructor, International Law Division, TJAGSA; MAJ Gary L. Walsh, Instructor, International Law Division, TJAGSA; and MAJ John T. Jones, Jr., Instructor, Contract Law Division, TJAGSA.

SYNOPSIS: Discussion of the international legal issues associated with Operation Desert Shield, including justification for use of force and war crimes. Also included is a discussion of Islamic law and its implications for U.S. forces stationed in Southwest Asia.

JA-91-0033I

Iraqi Aggression against the State of Kuwait: Background and Implications, Parts I & II (8th Annual Waldemar A. Solf Lecture)

DATE: 01 February 1991

LENGTH: 47:00/50:00

SPEAKER: Dr. W. Nathaniel Howell, Former U.S. Ambassador to Kuwait.

SYNOPSIS: Dr. Howell, the U.S. Ambassador in Kuwait at the time of the Iraqi invasion and occupation, discusses the impact of the Iraqi aggression on international law and international relations in the Middle East. Dr. Howell focuses on how the action undercut certain positive trends in Middle East State relations, and ushered in new aspects of regional cooperation.

JA-92-0006I

Wounded and Sick Conventions, Parts I & II (49th Law of War Workshop)

DATE: 29 October 1991

LENGTH: 29:00/52:00

SPEAKER: LCDR John W. Rolph, USN, Instructor; International Law Division, TJAGSA.

SYNOPSIS: LCDR Rolph discusses the legal consideration surrounding implementation of the 1st and 2d Geneva Conventions of 1949 dealing with the protections afforded wounded and sick during armed conflict. The protections afforded to wounded and sick in the field, and shipwrecked at sea; are covered as well as the protections afforded to medical personnel, equipment, and hospitals displaying the internationally recognized protected symbols.

JA-92-0008I

Desert Storm Legal Issues, Parts I & II (49th Law of War Workshop)

DATE: 31 October 1991

LENGTH: 58:00/46:00

SPEAKER: COL Raymond Rupert, CENTCOM Staff Judge Advocate and personal advisor to General Norman Schwartzkopf.

SYNOPSIS: Discussion of legal issues encountered at the theater CINC level during operations Desert Shield and Desert Storm.

JA-92-0012I

Legal Aspects of the War on Drugs, Parts I & II (11th Operational Law Course)

DATE: 03 December 1991

LENGTH: 44:00/47:00

SPEAKER: LTC Tony Byler, DOD General Counsel; Counter Narcotics Team.

SYNOPSIS: Presentation covers counter-drug operations and the legal issues that are frequently encountered in this area. Emphasis is placed on international counter-drug operations.

JA-97-0049I

Aspects of Civilian-Military Coordination During Ops, Parts I & II (10th Annual Waldemar A. Solf Lecture)

DATE: 23 April 1997

LENGTH: 48:30/39:00

SPEAKER: Ambassador Robert Oakley, Visiting Fellow; National Defense University, Washington, D.C.

SYNOPSIS: Ambassador Oakley relates a series of vignettes and illustrations drawn from throughout his distinguished career. The focus is on the role of the lawyer in advising the Joint Task Force Commander and working with host nations State Department officials. The lecture is an excellent snapshot of how to handle difficult operational issues encountered in Somalia and likely to recur during future deployments.

JA-98-0047I

Changing Nature of the Law of War, Parts I & II, The (11th Annual Waldemar A. Solf Lecture)

DATE: 9 February 1998

LENGTH: 60:28/41:00

SPEAKER: Judge Gabrielle Kirk McDonald, President Judge for the International Criminal Tribunal for the Former Yugoslavia.

SYNOPSIS: Judge McDonald discusses the work for the International Criminal Tribunals for both Yugoslavia and Rwanda, focusing on both the challenges in bringing these ad hoc tribunals into existence, and the potential impact they will have on the customary international law of war.

JA-99-0042I

Current Issues In International Law, Parts I & II (12th Annual Waldemar A. Solf Lecture)

DATE: 28 April 1999

LENGTH: 61:00/40:45

SPEAKER: Michael J. Matheson, Deputy Legal Advisor; U.S. Department of State, Washington D.C.

SYNOPSIS: Mr. Michael Matheson, the Deputy Legal Advisor for the Department of State, makes a presentation on recent international legal issues impacting U.S. military operations, to include law of war treaty developments, use of force issues, and the inter-agency process between the Department of State and the Department of Defense. The presentation also includes an extensive question and answer session.

JA-00-0024I

Present Challenges in International Law, Parts I & II (13th Waldemar A. Solf Lecture in International Law)

DATE: 01 March 2000

LENGTH: 66:00/31:18

SPEAKER: Professor Yoram Dinstein, President; Tel Aviv University

SYNOPSIS: Professor Yoram Dinstein, President, Tel Aviv University, makes a presentation on three of the challenges facing international law. First, he examines humanitarian intervention as a legal basis for the use of force among States, specifically within the context of Kosovo. Next, he discusses some of the problems related to internal armed conflicts. Finally, he examines targeting issues in air and missile warfare. The presentation also includes an extensive question and answer session.

JA-00-0040I

Operation Desert Storm: Prisoner of War Experiences

DATE: 16 August 2000

LENGTH: 60:00

SPEAKER: COL Rhonda L. S. Cornum, US Army Flight Surgeon.

SYNOPSIS: COL Cornum makes a presentation on her experience as a prisoner of war held by Iraq during Operation Desert Storm. COL Cornum reflects upon the treatment she received by her Iraqi captors, the special challenges facing a female prisoner of war, and the value of training she received prior to her captivity. The presentation ends with a question and answer session.

JA-00-0041I

What Happened to Yugoslavia?: A Prosecutor's Perspective, Parts I & II (2nd Annual Alan E. Sommerfeld Lecture)

DATE: 23 August 2000

LENGTH: 59:15/59:46

SPEAKER: Mr. Gregory Kehoe, Special Prosecutor for the International War Crime Tribunal for the former Yugoslavia.

SYNOPSIS: Mr. Kehoe, normally employed as an Assistant U.S. Attorney, was selected to prosecute one of the alleged war criminals brought before the International Criminal Tribunal for the Former Yugoslavia. In this presentation he relates his experiences as a prosecutor, focusing on the difficulty of proving the defendant's guilt

under the theory of command responsibility. He also addresses the problems associated with gathering evidence in an area of active conflict, and the unfamiliar rules under which the Tribunal operates. The presentation ends with a question and answer session.

JA-01-0015I

Negotiator's Perspective on the International Criminal Court, A; Parts I & II (14th Waldemar A. Solf Lecture in International Law)

DATE: 28 February 2001

LENGTH: 59:12/36:12

SPEAKER: Mr. David John Scheffer, Former Ambassador at Large for War Crimes Issues.

SYNOPSIS: In this presentation, Ambassador Scheffer critically examines the Rome Statute of the International Criminal Court. As the Clinton Administrations lead for all war crimes issues, Ambassador Scheffer is especially expert in the treaty and its policy ramifications. Here he addresses the positive and negative aspects of the treaty, and explains the rationale behind the decision of the United States to sign the treaty. The presentation ends with a question and answer session.

JA-01-0042I

Information Operations and the Changing Role for Operational Lawyers (3rd Colonel Alan E. Sommerfeld Lecture)

DATE: 29 August 2001

LENGTH: 51:00/59:42

SPEAKER: Mr. Richard L. Shiffrin, Deputy General Counsel for Intelligence, Office of the General Counsel, Washington D.C.

SYNOPSIS: Mr. Shiffrin helped author the recent General Counsel's Assessment of International Legal Issues in Information Operations and presents a discussion on the same topic. The presentation includes of recent issues in information operations (IO), including a brief historical look at some of the legal issues in IO. Mr. Shiffrin centers much of his discussion on computer network operations; to include computer network defense and computer network attack. He also deals briefly with the issue of neutrality and how that affects legal responses. The presentation ends with a question and answer session.

JA-02-0071I

Command Responsibility in the Law of Armed Conflict (15th Waldemar A. Solf Lecture in International Law)

DATE: 06 March 2002

LENGTH: 90:23

SPEAKER: Professor Leslie C. Green, Former Charles H. Stockton Chair of International Law, Navy War College.

SYNOPSIS: Professor Leslie C. Green makes a presentation concerning the customary international law doctrine of command responsibility. Professor Green begins his presentation with early historical examples of military commanders being held responsible for battlefield conduct. He then examines, in great depth, the numerous war crime tribunals immediately following WWII and their significant impact regarding the customary international law doctrine of command responsibility. Finally, he discusses the application of the customary international doctrine of command responsibility in the context of contemporary military operations. The presentation ends with a question and answer session.

JA-03-0022I

Iraq: Past, Present and Future, Parts I & II

DATE: 29 November 2003

LENGTH: 61:45/49:35

SPEAKER: Dr. Judith Yaphe, Senior Research Fellow and Middle East Project Director, Institute for National Strategic Studies, National Defense University at Fort McNair, Washington D.C.

SYNOPSIS: **SYNOPSIS NOT AVAILABLE.**

JA-03-0023I

Operations and Responsibilities of the International Committee of the Red Cross, (79th Law of War Workshop)

DATE: 07 February 2003

LENGTH: 88:36

SPEAKER: Ms. Nathalie de Watteville, Deputy Head of Delegation for North America, International Committee of the Red Cross.

SYNOPSIS: Ms. de Watteville is the Deputy Head of Delegation for North America of the International Committee of the Red Cross (ICRC). In her presentation, Ms. De Watteville places the Geneva Conventions in context by providing practical examples of how the ICRC works in the field to monitor compliance with the law of war. Replete with interesting examples of visits to war-torn regions and high profile prisoners of war and convicted criminals, Ms. de Watteville provides the viewer with a realistic look at the inherent difficulty in enforcing the law of war in regions where brutality has replaced humanity.

JA-03-0024I

The International Criminal Tribunal for Rwanda: A Prosecutor's Perspective, Parts I & II (79th Law of War Workshop)

DATE: 07 February 2003

LENGTH: 51:10/46:30

SPEAKER: Mr. Gregory Townsend, Prosecutor's Office, The International Criminal Tribunal for Rwanda.
SYNOPSIS: **SYNOPSIS NOT AVAILABLE.**

JA-03-0025I

Oil and Democratization in the Persian Gulf, Parts I & II

DATE: 12 February 2003

LENGTH: 45:27/50:00

SPEAKER: Dr. Jean-Francoise Seznec, Founder and Managing Director of the Lafayette Group, Annapolis, Maryland.

SYNOPSIS: Dr. Seznec is the founder and managing director of the Lafayette Group, a privately held investment company specializing in the acquisition and management of chemical companies. Dr. Seznec is also an adjunct professor at both Georgetown and Columbia universities. Given within two months of the start of Operation Iraqi Freedom, Dr. Seznec addresses the move toward democratization in Saudi Arabia and the Persian Gulf region. Drawing differences between Jeffersonian democracy and limited democracy of the region, Dr. Seznec addresses the types of democratic changes that have taken place and the tension this creates with the ruling families. Dr. Seznec, in answer to questions, goes on to address Iraq as fertile ground for democracy and the challenges facing the coalition in trying to establish western style democracy in a secular country that has lived through over twenty years of Stalinist rule.

JA-03-0026I

Promoting Justice and Accountability in Sierra Leone, Parts I & II

DATE: 13 February 2003

LENGTH: 49:27/47:35

SPEAKER: Mr. David M. Crane, Chief Prosecutor of UN War Crimes Tribunal for Sierra Leone.

SYNOPSIS: **SYNOPSIS NOT AVAILABLE.**

JA-03-0030I

Bellum Americanum Revisited: U.S. Strategy and the Jus ad Bellum, Parts I & II (16th Waldemar A. Solf Lecture in International Law)

NOTE: THIS PROGRAM IS FOR USE BY TJAGSA PERSONNEL ONLY

DATES: 27 February 2003

LENGTH: 53:00/54:30

SPEAKER: Professor Michael N. Schmitt George C. Marshall European Center for Security Studies

SYNOPSIS: Professor Michael N. Schmitt, Professor of International Law in the College of International and Security Studies at the Marshall Center in Garmisch, Germany, was the 2003 Solf Lecturer. Prof. Schmitt spoke on the concept of American use of force in today's environment and potential "fault lines" where current international law may not be sufficient to deal with anticipated threats. He focused his remarks on the areas of terrorism, weapons of mass destruction, and humanitarian intervention.

JA-03-0031I

The Role of the Operational Lawyer, Parts I & II (39th Operation Law Course)

DATE: 05 March 2003

LENGTH: 61:00/38:10

SPEAKER: MG (Ret) William L. Nash, Senior Fellow and Director, Center for Preventive Action, Council on Foreign Relations, Washington D.C.

SYNOPSIS: MG (ret) Nash, Director of the Council on Foreign Relation's Center for Preventive Action and an Adjunct Professor at Georgetown University was a guest speaker at the 39th Operational Law Course MG (ret) Nash commanded the United States Army's 1st Armored Division from June 1995 to May 1997, including assuming the role of Commander of Task Force Eagle in Bosnia-Herzegovina. Major General Nash was a platoon leader in Vietnam and an armored brigade commander in Operation Desert Storm. MG (ret) Nash spoke on a commander's perspective on the role of the lawyer as an advisor. He also talked about several timely issues including treatment of captives, the International Criminal Court (ICC) and recent events that occurred in Jenin, Israel.

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